

Lords' Rights and Peasant Stories

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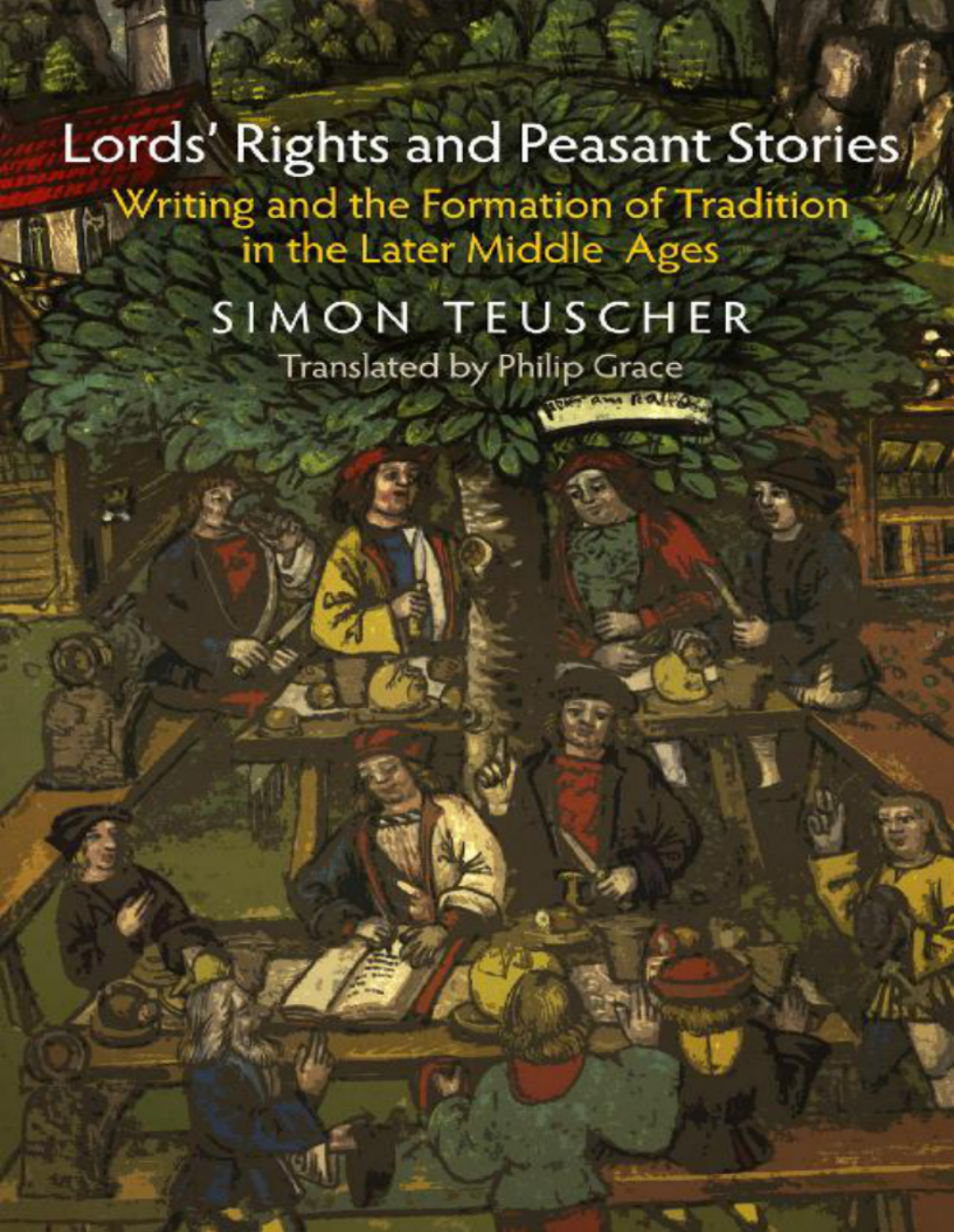
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Writing and the Formation of Tradition
in the Later Middle Ages

SIMON TEUSCHER

Translated by Philip Grace

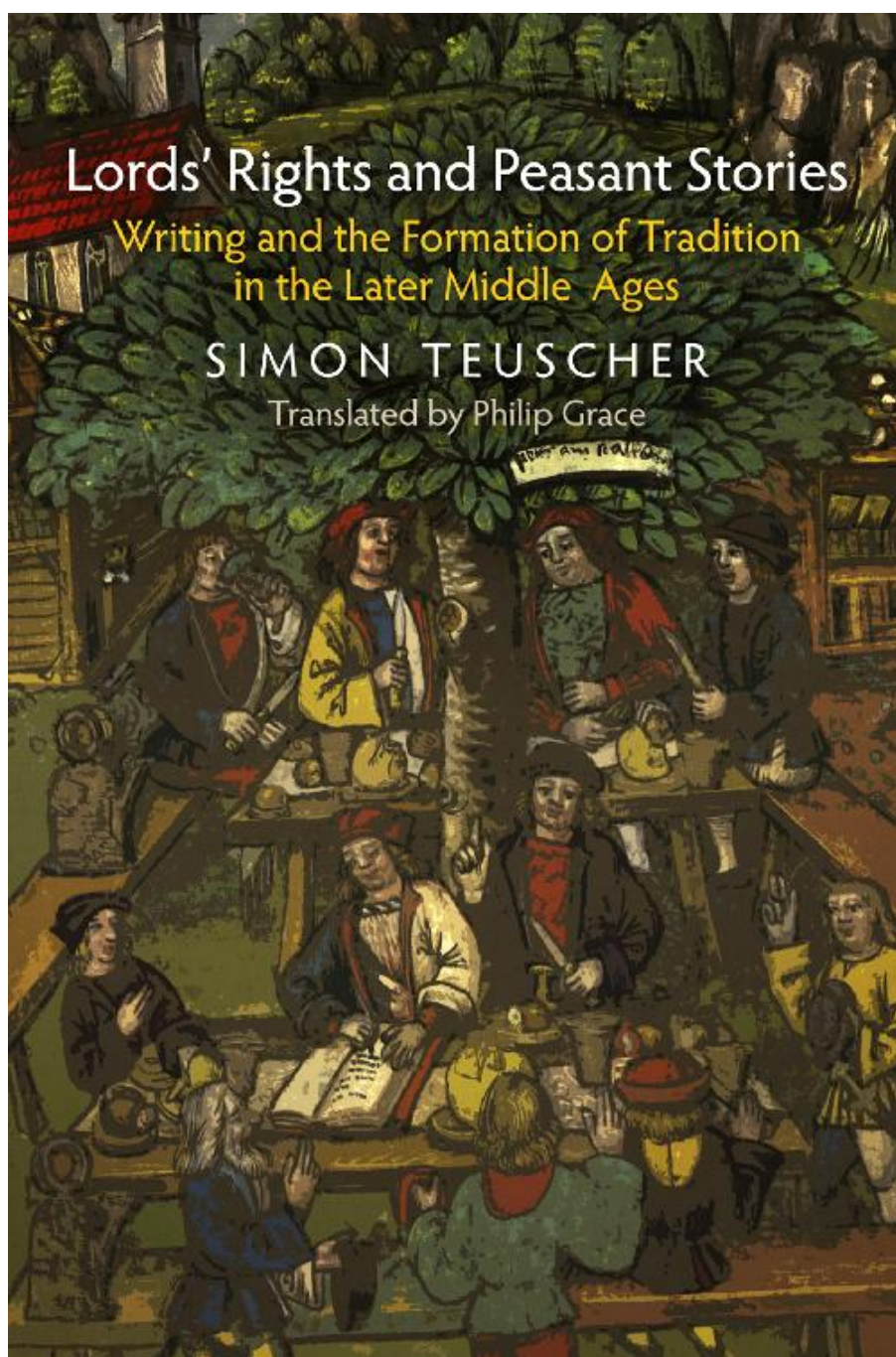


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LORDS' RIGHTS AND PEASANT STORIES

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Introduction

Law is, in the modern conception, inextricably linked with writing. Whether we consult legislation, fill out forms, or deal with stacks of files, we cannot imagine contemporary legal life without written documents. By contrast, late medieval law, which was conveyed through speech instead of through writing, has an exotic allure that has long fascinated researchers. In the midnineteenth century, Jacob Grimm published a collection of late medieval records of local law—called *Weistümer*—that was scarcely less comprehensive than his famous collection of fairytales.¹ As with the fairytales, Grimm assumed that, before their transcription, people had handed these down orally from time immemorial. He felt his understanding was supported by the poetic introductory passages of the *Weistümer* that depicted ritualized assemblies in which the lord of a village summoned his peasants and required them to report the law from memory.

Many of Grimm's assumptions have long since been refuted, as unwritten legal culture has begun to attract new attention. A number of historical and social theories that have emerged since the 1960s ascribe to the transition from orality to literacy a key function in the process of modernization. Writing is now highlighted as a prerequisite for the forms of organization and the dissemination of knowledge, including the communication of regulations, without which modern society would be inconceivable. As a rule, this school of thought adopts orality and literacy as a dialectical pair by which one can differentiate traditional from modern society, and it elevates the latter to the *telos* of history. Traditional societies are no longer characterized as merely static, religious, and collective, but also as oral, and modern societies are no longer seen only as dynamic, secular, and individualistic, but also as literate. It became widely accepted to claim that in the societies of the so-called Third World, this impulse toward modernization is only beginning, while it has been operating in Western societies since the Middle Ages through the proliferation of writing, printed books, and alphabetization. Ultimately, the process by which writing spread at the close of the Middle Ages has come to serve as a model of political development, and the oral society of the Middle Ages has functioned as a counterpoint to the modern. Critics of modernization see this as a golden age in which a culture of consensus reigned in place of modern contentiousness, in which order was preserved by direct encounters between lords and peasants instead of by an anonymous administrative apparatus, and in which the expert knowledge of jurists was considered less important than the moral feeling of a wider population. Yet what do we really know about how less literate societies in the Middle Ages functioned, and about

what influences writing actually had on law and the organization of society?

This book examines the processes through which law and rights, especially rights of lordship, were put into writing between the thirteenth and fifteenth centuries in what is today the Swiss midlands. It asks how medieval actors agreed on unwritten rules and how the political order was altered in the context of proliferating written records of law. For the study of such questions, not much more is available today than the original records of unwritten law. On the other hand, neither Grimm nor his critics took advantage of the possibilities for insight that the physicality of the documents provides. These are not only texts that contain descriptions of this or that practice; they are also artifacts, and as such they are themselves reflections of the process of their creation and their uses. The history of these practices has yet to be told.

As the earliest accessible written expressions of an unwritten legal culture, records of customary law derive their binding force from the fact that they present rules that had already been followed in practice or had been passed down orally before their transcription. Two types of such documents, connected to different procedures in the establishment of law, stand at the center of this study: Weistümer and deposition records (*Kundschaften*). The Weistümer that Grimm collected record whole series of village legal regulations and report these as the contents of traditional oral legal pronouncements (*Rechtsweisungen*) in local court assemblies. Deposition records, on the other hand, record the results of witness inquiries that were carried out as needed to clarify the details of contended regulations.

Weistümer and deposition records make it possible to study how laws were written down at different levels of the political system. As texts these documents grant a lively glimpse of local practices of invoking, enforcing, or even ignoring rules in everyday life. As documents, Weistümer and deposition records were predominantly used in formal proceedings by higher territorial and courtly authorities; they were the tools of juristically trained officials mostly concerned with conflicts between competing lords. At both levels, these forms of communication changed fundamentally over the course of the late Middle Ages.

At the center of this study are the territorial and small-town societies of a region that lay at the crossroads of the Holy Roman Empire, the Italian urban communes, and the kingdom of France. It was characterized by the coexistence of different styles of lordship in close proximity. Along with strongly centralized territorial lordships like those of the counts or dukes of Savoy, numerous small ecclesiastical and noble lordships asserted themselves, as did cities with territorial ambitions. The diversity of this political landscape makes it possible to study how forms of negotiating unwritten law developed reciprocally with processes of the development of the state, the adaptation of Roman law, and the emergence of specific

administrative cultures. Each of these processes will be addressed in the next section in the context of the discussion of the broader historiographic context. After establishing this groundwork, I will lay out the institutional and social developments of the geographical area under study and define the sources and approach of the study.

Historiography

Studies of the way local law was written down stand at the intersection of multiple areas of research, such as investigations of normative systems and local forms of organization in the late Middle Ages or explorations into the social implications of the increasing use of writing. Before going into these discussions in detail, I will trace the development of seminal ideas about the process and implications of the textualization of the law.

Jacob Grimm's Legacy

Scholarly research on unwritten local laws looks back on a long history that is itself only beginning to be written. One could start with Roman jurists, or indeed at the latest in the twelfth century with the *consuetudines*, the unwritten legal customs of cloisters and bishoprics that were a central subject of scholarly debate among experts of canon law.² During the late Middle Ages and the early modern era, such discussions reached beyond cloisters and universities to officials and notaries who, during the period studied here, also argued about how the unwritten legal customs of villages, cities, and territories should be systematized.³ These debates mostly dealt with contemporary legal problems. In contrast, literary scholars and legal historians of the nineteenth century conceptualized the textualization of law as a fundamental shift in cultural history. This conception determined the course of research into unwritten law and its early textualization.⁴

The work of Jacob Grimm, above all, has affected the course of subsequent research.⁵ Grimm believed the late medieval records of heretofore unwritten laws were like the fairytales he collected. He viewed both as expressions of a primeval German folk culture that had been orally passed down in substantially unaltered form since the time of pre-Christian Germanic tribes. The popular law seemed to him inextricably interwoven with morality and tradition. Hence, in his reconstruction of German “folk law,” Grimm incorporated many other legal and literary writings from different chronological periods, such as the *Sachsenspiegel*, Scandinavian law books, and Eddic poetry.⁶ Ultimately, Grimm’s interest was focused on the Germanic—that is, on an ethnic German culture. Thus, he excluded material that he could not reconcile with his conception of an indigenous Germanic legal culture unspoiled by Roman influence. Grimm deliberately decided

against any close association with the rich French-speaking Weistümer tradition.⁷

Grimm's collection inspired many additional regional projects of Weistümer editions in German-speaking areas, and led in the end to the establishment of specialized Weistum scholarship.⁸ Grimm succeeded in promoting ongoing interest in Weistümer that continues to the present day, which may never have attracted more attention than any other documents of medieval local administration had he not popularized them under the rubric of culture. In the historiography of German-speaking territories, peasant culture figures prominently in projections of national unity back to the late Middle Ages—unlike in England or France, where kingdoms and royal legal authority were worshiped as the source of myths of national continuity. It is thus not surprising that Nazi Germany promoted the study of regional Weistümer in occupied Alsace in the context of its Germanization policies.⁹

From "Germanic" to "Traditional" Conceptions of Law

That Grimm's conception influenced research far beyond Germany is probably due primarily to the work of Fritz Kern. In 1919 Kern published the short introductory piece *Recht und Verfassung im Mittelalter*. Its English translation subsequently would appear on the list of required readings for countless English-speaking history students.¹⁰ Kern described a medieval understanding of law in which law was established by neither the state nor any other authority. Law was instead seen as God-given, and it expressed itself in the consciousness and customs of the population. It could not be passed, stipulated, or composed, but rather had to be discovered as "good, old law." Kern greatly expanded the scope of this definition of law. In contrast to Grimm, he traced law back less to a specific German culture than to material and institutional conditions of the administration of justice during an "early Middle Ages," which he defined only in vague chronological and geographical terms. Kern suggested that law in this early period was only selectively recorded. Therefore the possibility of gaining insight from the existing records of law was limited.¹¹ Often legal agreements were quickly forgotten and replaced with new regulations.

Unlike Grimm, Kern doubted that the "old law" was actually old. He assumed that the medieval "mindset" was not capable of understanding legal innovations as such. Kern explained the idea using the picturesque metaphor of a forest: it can be thought of as old even though it is composed of trees that have grown only recently. This organic understanding of customary law arose first under the influence of *jus commune*, that is, Roman and canon law.¹² Kern was only marginally interested in the details of how this transition had come about. More important to him was the establishment of a fundamental distinction between the modern and the original medieval

understanding of law.

Kern's comparison of unwritten and written legal systems has continued relevance in contemporary scholarly debates over the implications of the proliferation of writing—and of new media generally. A different impulse drives this trend in research through historian Michael Clanchy's groundbreaking work on the proliferation of writing in England at the outset of the central Middle Ages.¹³ Due to Clanchy's influence on the social anthropologist Jack Goody, Kern's theories found their way into Goody's influential *The Logic of Writing and the Organization of Society*. Goody understood his own research as a contribution to the postcolonial debates over the cause of economic and political inequities between industrial states and the so-called Third World. Goody countered theories that explained the north–south divide using ethnic differences. Regardless of ethnicity, he argued, the use of writing promotes the development of structurally similar mental, economic, and social processes and makes possible the transformation of traditional into modern societies. Goody's work can be read as the theoretical foundation for literacy efforts as an instrument of development politics, a banner which the United Nations and many non-governmental organizations have rallied to since the 1960s.

Goody's picture of non-writing societies rests on a combination of Kern's thought, which he cites in detail, and the findings of ancient history and social-anthropological writings on non-writing African societies in the twentieth century.¹⁴ In Goody's view, written records granted the law an autonomous status and made systematic analysis and conceptual development more feasible.¹⁵ In contrast, for societies that seldom or never used writing, law was amalgamated with customs, morality, and tradition, so that past and present, longstanding precedent and contemporary norms merged seamlessly with one another.¹⁶ The old unwritten law, which Grimm understood as peculiar to a Germanic folk culture, and which Kern explained as a common phenomenon of early medieval mindsets, seem to Goody to be a component of a universal legal culture in non-writing societies. Critics have accused Goody of championing the cultural superiority of the West, since he places Third World societies at a stage of development that Western society had already left behind by the end of the Middle Ages.¹⁷ In the ensuing debates, perceptions of the Middle Ages and its legal culture took center stage in reflections about modernity, modernization, and strategies for political development.

Against the backdrop of this reception history, Jacob Grimm's theories suggest new perspectives in scholarly discussion regarding at least three different questions: How should we understand the unwritten law of the Middle Ages? How did less literate local societies of the Middle Ages organize themselves? And how did these societies change in the context of the process of textualization? The subjects of these central problems will be broached briefly below.

From the second half of the twentieth century, legal historians began to express ever-increasing reservations about Grimm and Kern's depiction of medieval legal models—though admittedly they were not heard outside of a specialized circle. Several works, for example, leveled the criticism that the concept of a Middle Ages oriented toward “good, old law” rested on a biased choice of the legal practices considered. Grimm and Kern excluded from their research phenomena they saw as forerunners of modern practices, although these were often recorded earlier than many of the examples they used in describing “good, old law.” They disregarded, for example, the fact that medieval lords deliberately established and regularly renewed local regulations through grants of privileges, as did cities through the use of statutes.¹⁸

It is especially difficult to comprehend why Grimm and Kern excluded from their research early forms of recourse to Roman and canon law, because the very concept of the old legal customs or the *longa consuetudo* on which they built their models of a folk customary law is itself derived from Roman law.¹⁹ Alain Boureau has recently shown how specialists in learned law applied the concept of *consuetudo* to debates over church law in the twelfth century in order to record norms of quite different kinds in collections called *coutumiers* and to collect them in a unified form as complements to written church law (*la loi*).²⁰ As Boureau concisely sums up, “The *coutumier* is custom's cunning homage to the law.”²¹ In the early 1970s, Karl Kroeschell took an even more radical stance regarding the use of the concept of *consuetudo* in secular law. He maintained that the description of a norm as a legal custom primarily expressed a desire for it to be categorized as learned law and accordingly indicates almost nothing about its origin or about the reason for its validity outside the categories appropriate to learned law.²²

Kroeschell's study of actual court cases found that, at least for the early and central Middle Ages, it is possible to speak at most of individual legal customs but not of a coherent body of customary law. Courts did not “find” law in the sense of recovering or remembering preexistent rules in order to apply them subsequently.²³ In that sense, law was substantially inherent in formally negotiated verdicts and agreements from individual cases.²⁴ In her work on early medieval case law, Janet Nelson confirmed these findings and stated more emphatically that Kern's “good, old law” was simply a myth.²⁵

Kroeschell did not attempt to refute Grimm and Kern's overall thesis. In fact, his own conclusion is almost a paradox: he could not produce any concept of an old customary law in the case law of the early Middle Ages that was not already influenced by the *jus commune*. Despite this, he accepted without question that the good, old law was constantly invoked in the early sixteenth century, not least by peasants who were rebelling against

new lordly impositions.²⁶ To the extent that works on territorial legal orders of the fourteenth to sixteenth centuries take any notice of Kroeschell's findings, they dismiss it as a problem of transmission. According to this line of thought, a peasant legal consciousness (which, as such, is assumed to be particularly traditional) first shows up in later sources that reflected a greater number of statements by representatives of the lower classes.²⁷

The new conclusions of legal-historical research, according to which unwritten law was not merely displaced in the course of the late Middle Ages but also subject to radically new understandings, have only received peripheral notice in most scholarly literature.²⁸ The most recent studies continue to organize themselves according to a dichotomy between "old" and "new" law. This obscures the fact that the legal culture and lordship of the late Middle Ages developed dynamically, despite our temptation to label them as "still oral" or "already written."

Approaches to the Organization of Local Communities

Especially in German-speaking research on rural communities of the late Middle Ages, the reception of Grimm and Kern coalesced into a methodology that appears quite idiosyncratic from a modern and internationally comparative perspective. In this regard, Otto Brunner's work of the 1930s has proven formative—to an almost tragic degree. Brunner espoused the view that late medieval legal regulations, because they represented the direct expressions of popular knowledge, were held much more deeply than contemporary laws, and therefore were virtually ontologically alien to a modern understanding.²⁹ Accordingly, Brunner determinedly declined to apply any modern conceptual models of state power or of social and economic classes to the study of rural society. Instead, he advocated a methodology that focused on clarifying the concepts and relational and organizational categories in contemporaneous legal documents. For example, he believed that, instead of focusing on social inequality, research should treat the relationship between lords and their dependents as one of reciprocity, a concept that medieval legal documents place in the foreground. According to Brunner, such lordship relations are not congruent with a modern conception of power but must be understood according to the late medieval conception of an exchange, in which the lord supplies protection and the dependents supply loyalty.

In his persuasive critique of Brunner's work, Gadi Algazi has demonstrated that Brunner interpreted these late medieval legal categories in a most imprecise way, and that the analysis was guided by the authoritative political ideology Brunner gleaned from his time as an active member of the Nazi Party (NSDAP).³⁰ Equally serious is the fact that, in the long run, Brunner's work undergirded a research tradition that made it difficult for critics engaged in the analysis of agrarian society of the late

Middle Ages to categorize actors in ways other than the medieval legal documents themselves do. Categories like “lord” and “peasant” incorporated persons whose social and economic situations were so heterogeneous that the uniformity of their interests can in no way be taken for granted. This heterogeneity has been demonstrated by research on the rural society of the late Middle Ages focused on social science methods, which has been carried out in France since the middle of the twentieth century but has only hesitantly been implemented in the Germanspeaking world.³¹ This research indicates the complexity of rural social stratification and the significance of lines of conflict that cannot be derived from legal descriptive categories but rather rest on, for example, economic relations or informal types of sociability.

The present study tries to treat legal norms neither in the tradition of Brunner nor in the one of social history of the French type. The former threatens, in effect, to equate legal procedures and social practice. The latter tends to relegate conflicts over law to the realm of legal history and to exclude them from its own research on social practice. The point of this study, in contrast, is to set practical activities regarding the law in conjunction with other aspects of social life. Only in this way can we grasp concretely how legal life changed in the context of the increasing use of writing and the reception of the *jus commune*.

The Transition from Orality to Textuality

The findings of Clanchy and Goody have initiated a new research direction, one that focuses on the increase in the use of writing during the late Middle Ages as the driving force and indicator of societal change. Since the end of the 1980s, numerous works have appeared on the consequences of textualization in different areas of life. They deal, for example, with the implications of manuscript culture for lay piety, or discuss what upheavals the recording of statutes in the urban communes precipitated.³² The diverse (and in some cases controversial) conclusions of this strand of research cannot be summarized in a few sentences, but the overall result is doubtless that the textualization of law and administration was bound up with trends that configured the social order in a more precise way and subjected rules of conduct to generalizable regulations—procedures that have sometimes been subsumed under Max Weber’s notions of bureaucratization of social power.³³ More recently, a growing number of studies have countered this conclusion, arguing that many social changes can be explained less by the adoption of writing itself than by the enforcement of specific, though not always rational, techniques associated with the conventions of writing.³⁴

The records of heretofore unwritten laws like Weistümer and deposition records have until now been of interest less in the context of the process of textualization than as remnants of their unwritten origins. They have

sometimes served as sources in works on rituals, procedures, and mnemonic aids for the unwritten transfer of knowledge, as well as in studies of the interdependencies between elite and folk culture.³⁵ Especially in studies inspired by the works of Emmanuel Le Roy Ladurie and Carlo Ginzburg, witness statements function as access points for the study of the authentic oral voices of people from social classes that hardly ever produced written documents themselves.³⁶ Such research frequently mentioned, but ultimately evaded, the fundamental problem that medieval orality is accessible only in the form of written records. Most research has failed to treat such “sources of orality” as witnesses of a changing culture of writing, and it has scarcely considered when particular types of such records appeared, what contemporary recordkeeping needs they filled, or how their composition changed. Asking such questions will not entirely resolve the problem that medieval orality can be accessed only in written form. Yet such questions make it easier to grasp the accompanying epistemological difficulties. The written records no longer merely appear as transcriptions of oral statements that “were real” but rather establish points of entry into the question of how the development of written culture was impacted by the understanding of orality. This raises the question of how much the picture of the oral culture that preceded the process of textualization was itself formed by this process.

A Diverse Political Landscape

The present study deals with source material from an area that today lies in Switzerland; it is bounded by Lake Geneva in the west, the vicinity of the city of Zürich in the east, and the mountain ranges of the Jura to the north and the foothills of the Alps to the south. Although today it is united in a single nation-state, this region has seldom been treated as such in medieval research,³⁷ for before 1500 it displayed great political and cultural diversity. This very diversity provides a strategic research opportunity. Here, the procedures for the establishment of unwritten law can be studied in their interactions with different lordship structures, styles of administration, and political cultures. Here I will delineate a few important structural features of this region, as well as some of its political and social developments.

Church administration did not originally treat this territory as a unified region, since it included the far-flung archbishoprics of Vienne in Provence (Geneva), Besançon in the French Jura (Lausanne and Basel), and Mainz in the German Rhineland (Constance). Similarly, different parts of the region had different geographic orientations with regard to long-distance trade, which bound the region of Zürich mainly with Swabia and Lombardy, while the area west of Bern was mainly connected with Burgundy and Provence.³⁸ None of these geographic divisions corresponded with linguistic boundaries. In the eastern and central parts of the region, German dialects were spoken;

in the west, Romance vernaculars. The latter included two different language groups: French (*langue d'oïl*) in the northwest and several Franco-Provençal dialects in the southwest. While Latin remained the language of government in Franco-Provençal areas until the sixteenth century, in the rest of the region under examination it had already been displaced by German and French written languages for governance purposes during the fourteenth century.³⁹

Political Authorities

In political terms the region was unified, if only because it belonged to the Holy Roman Empire. Indeed, imperial affiliation played a role in the perception of legitimate rule that should not be underestimated. In the end power relations were primarily defined through the numerous regional and local power complexes (*Herrschaftskomplexe*) that had a large amount of de facto independence. In the course of the late Middle Ages, only two of these lordships established a claim to control over relatively extensive territories, two families of counts who had maintained a perpetual rivalry since the thirteenth century: the House of Savoy and the Habsburgs. In the west, the counts of Savoy (later titled the dukes of Savoy) built a territorial power complex on both sides of the Alps to which belonged both present-day French Savoy and present-day Italian Piedmont. (This territory would form the basis for the establishment of an Italian nation-state in the nineteenth century.) The late medieval power complex of the dukes of Savoy is considered to have been one of the most strongly centralized on the European continent, and it anticipated developments that first filtered through to the remaining princes of the empire during the early modern period.⁴⁰ By 1285 the counts of Savoy had already substantially succeeded in binding as vassals the majority of the local nobility in the western part of the area under examination (namely in Chablais on Lake Geneva and to the north in the Pays de Vaud). Initially, fundamentally similar developments marked the formation of the lordship of the Habsburgs in the oldest set of holdings of this dynasty, which surrounded the actual Habsburg castle situated in the east of the area under examination. In the transition from the Middle Ages to the early modern era, the Habsburgs accomplished an unequaled ascendancy from territorial lords to imperial dynasty, and—with lordship over the Netherlands, Spain, and the American vice-royalties—they were on their way to worldwide lordship. In the shadow of these developments, the integration of the Habsburg territories that lay in the region under examination, the so-called *Vorlande*, slowed, and they were finally disbanded in the fifteenth century, except for some leftover territories.⁴¹

Partially due to the power vacuum left in the wake of the Habsburgs' retreat from the region, and beginning at the transition from the fourteenth

to the fifteenth century, several urban communes in the east acquired territorial lordships through purchase and conquest. The cities of Bern, Zürich, and Luzern, which formed a loose alliance through the Swiss Confederacy, played a leading role in this process. Like noble lords or ecclesiastical institutions, the cities thought of their possessions as lordships and the possessions' inhabitants as subjects.⁴² They built territorial complexes that were among the most extensive urban dominions north of the Alps and had their closest parallels in the *contadi* of Italian cities.⁴³ In many cases, the cities contented themselves with a kind of overlordship supervising their hinterlands that entailed primarily the right to exercise supreme judicial authority, collect property taxes, and levy troops. By contrast, local and mid-level judicial rights remained with local lords, many of whom were also influential citizens of the cities in question.

Despite the successful expansion of the Savoyards and the Swiss confederate cities, numerous small lordships asserted themselves through the end of the fifteenth century.⁴⁴ They not only escaped incorporation into large territorial power complexes but also accumulated local lordship rights and built territories around themselves on a smaller scale. Among them were bishoprics such as Basel and Lausanne; monastic foundations such as the Cluniac priories of Romainmôtier and Payerne and the Benedictine abbey of Einsiedeln; and institutions like the Grossmünster college of canons in Zürich.⁴⁵ The category also included large autonomous noble lordships, such as those of the lords of Chalon, who belonged to the ranks of French princes,⁴⁶ the counts of Neuchâtel and Gruyère, and the barons of Hallwil.⁴⁷ Also notable in this context is a phenomenon peculiar to the region that requires assessment: the rural communal entities, such as Uri, Schwyz, and Unterwalden, which emerged as autonomous political powers exercising lordship over neighboring entities.⁴⁸ This was certainly an important local phenomenon, but its significance as the source of a "peasant state" has been overemphasized in Swiss national history.

The complexity of these political structures rests on the fact that, in many cases, claims of lordship overlapped on a local level. Even the successful territorial power complexes often divided their lordship of individual villages with potential rivals. The delineations of such rights were highly complicated, because local and regional lordships formed ties of dependence with one another through the granting of lordship rights as fiefs and pledges, and these ties manifested somewhat differently in each place. Moreover, factions among the peasants within a village were often bound up in clientage relationships with lordly officials, who in turn were bound up with greater lords.⁴⁹ Under these circumstances, the regulation of local legal relationships often fulfilled functions that later, in modern states, became primarily the affairs of capital cities and high diplomacy; the village was the central object of and site for conflicts between rival lordships.

The administrative systems of the different power complexes experienced similar developments, though they also exhibited marked regional variations and proceeded at different rates of development. Greater lordships consolidated and standardized legal, military, and fiscal systems in their regions of influence. In contrast to older, personal networks of vassals and followers, new administrative systems fashioned themselves on territorial organizational principles.⁵⁰ They supported themselves through longstanding official posts, the salaried holders of which were responsible for defined geographic regions. Thus by the thirteenth century, the Savoyards allocated the local lordships within their territories to castellanies, entrusting their administration to important supporters. At the middle level, the castellans of the territory were under the control of the Savoyard ballivate of Vaud or Chablais and eventually the central Savoyard courtly administration. From around 1400, cities also subdivided their territorial administrations into districts, each of which fell under the responsibility of a territorial steward (*Landvogt*) recruited from the urban elite.⁵¹ Eventually, administrative duties in the service of a greater noble lord and his knightly followers offered better prospects for wealth and prestige than the traditional exercise of local rights of lordship.⁵² While the social ruling class of the area under consideration still consisted to a considerable extent of relatively autonomous local lords at the beginning of the thirteenth century, by the end of the late Middle Ages these appeared ever more distinctly as a service aristocracy, into which members of the urban ruling classes could also ascend.

These developments resulted in far-reaching changes at the local level of the villages.⁵³ Small, local lordship complexes were increasingly incorporated into large territories or used by members of the urban upper classes as negotiable investments. In both cases lordship rights were in practice increasingly exercised by officials who had often been recruited from the ranks of the local inhabitants.⁵⁴ In everyday life, the exercise of lordship appeared less often in conjunction with lords than with their office-holding dependents. The retreat of local lords from the villages and the new, increasingly collective methods of production helped to raise collective or communal forms of organization—which were carried out by the local inhabitants themselves—to a higher political-legal status.⁵⁵ Local communal institutions sometimes functioned as the means for enforcing lordly demands, but sometimes also as substrates of resistance by peasant populations and especially by village ruling classes. Communes often bought rights to taxation or to legal authority from their lords. Subsequently, communes functioned as *de facto* lords over their own members—as communal holders of taxation and regulatory rights.⁵⁶

After the economic and demographic crises of the second half of the

fourteenth century, many villages switched to forms of production that were focused less on self-sufficiency than on urban markets. This led to specialization in the production of particular goods like wine, meat, and raw manufacturing materials. As a consequence, rural producers also turned to purchases from markets to meet their everyday needs.⁵⁷ From this arose both new possibilities for profit and new risks of poverty, which together heightened the social and economic inequalities in village society.⁵⁸ Lordship institutions or individual lordly officers often played important roles as intermediaries between rural producers and urban markets, serving as creditors and brokers.⁵⁹ This resulted in many interconnections between relationships of lordship and economic dependency. How this affected the implementation of local lordship rights remains to be examined.

The new ruling class made up of officials and members of the territorial power complexes became the agents of an administrative culture characterized by specific practices and concepts of order that went through fundamental changes. Between the thirteenth and fifteenth centuries, administrative specialists adopted increasingly elaborate writing techniques; borrowed academic methods for the determination, interpretation, and enforcement of rules; and developed a new understanding of order. From the early thirteenth century, this can be discerned first of all in attempts by church institutions to document local lordship rights systematically in writing. From the end of the century, the Savoyard administration, which had often modeled itself after northern Italian city administrations, took a leading role in the implementation of new administrative techniques. Here writing also increased the control of individual operations that were carried out through the law. Before 1300 the Savoyards had already assembled numerous lists of goods and services and developed a complex bookkeeping system for the finances of individual officials; they began to manage their archives systematically around the end of the fourteenth century.⁶⁰ Such techniques arrived in other power complexes after a delay of sometimes several decades. Likewise, Italian and Provençal influence is responsible for the fact that notarial practice was already widespread in the fourteenth century in the western part of the region under examination, while in the east it was only during the early modern period that it gained similar significance.⁶¹

Regardless of the spread of notaries, there is a visible and common tendency around 1400 throughout the area under examination to document in writing the business dealings of a large portion of the population, and to make possible ever more systematic control by the lordship's administration. In this context, even smaller power complexes increasingly relied on the service of administrative specialists, who often boasted at least a rudimentary university education.⁶² These developments cannot be described merely as "administrative progress" in the sense of an ever more efficient domination. They were bound up with more complicated processes, such as

the implementation of new balances of power and new ways of negotiating the law and order of society.

Legal Systems

The textualization of law could take many forms that differed in details. Most of the territory under examination recognized what previous research has categorized as customary law.⁶³ Customary law can most easily be described *ex negativo* as the totality of rules that were neither defined by Roman and canonical law—the *jus commune*—nor enacted by established authorities. In point of fact, it included norms that not only varied from place to place but also were not necessarily regarded as part of a unified system in a given place.

Around 1300, the southwestern portion of the region was the first to receive learned Roman and canon law. This expressed itself first in the borrowing of several principles, concepts, and procedural techniques. Among the courts of lay lords, only those of the Savoyards switched over; they systematically implemented regulations covered in the corpus of Roman law. One exception were the Savoyard courts in the ballivate of Vaud, which recognized the regional unwritten legal customs (a privilege they also granted to the Aosta Valley) even when these ran contrary to Roman law. The Savoyards may have given Vaud this special treatment earlier, but in any case it was confirmed in 1373 as a chartered and in fact widely respected privilege.⁶⁴

The legal systems of those cities that enjoyed far-reaching autonomy relied first and foremost on statutes that the city councils had deliberately enacted—sometimes in explicit opposition to existing norms.⁶⁵ To what extent such statutes should conform to or be supplementary to either the *jus commune* or unwritten legal customs was always a matter for debate.⁶⁶ Because of this, the legal customs of autonomous cities were only rarely written down. The cities behaved quite differently regarding the administration of their rural subject territories, for which they usually did not establish statutes comparable to the urban ones before the sixteenth century.⁶⁷ When the local rights of such subject territories were even listed in writing before that time, they were treated as customs, and their validity was therefore founded on the fact that they had already been valid before their description.

The situation of the Savoyards' Pays de Vaud and the rural territories of cities within the Swiss Confederation was essentially the same as that of the territories of the Habsburgs and the smaller nobles and ecclesiastical lords. To these lordships belonged, along with rural estates, a few cities which, despite their considerable size, achieved only very limited autonomy. Examples of this can be seen in Neuchâtel, which belonged to the duke of the same name, or in Lausanne, over which the local bishops ruled. Up to the

end of the Middle Ages, the local legal rules for such cities were primarily customs, much as in the villages.⁶⁸ These unwritten rules, in all their bewildering diversity; the attempts to record and systematize them; and the cultural and social implications of these processes are among the principal themes of this book.

Sources and Methodology

Documents form the unavoidable point of departure for this study. It is neither factually nor methodologically justifiable to present a completely illiterate society as the starting point for a study of the process by which writing spread. In fact, writing had long been present in the region of the foothills of the Alps, although before the thirteenth century it was not employed primarily for political and legal functions. The only way methodologically to avoid replicating the same old (and inaccurate) picture of a timeless oral culture is to study documents that detail how oral communication functioned concretely at particular points in time. Here I will make a few preliminary remarks regarding the transmission of and previous research on such documents, as well as on the central questions and methods of this study.

Documents

The delineation of unwritten law was a component of innumerable disputes both in and out of court, and accordingly could take diverse forms. These were often markedly situational and implicit. In order to detect long-term developments precisely and systematically, this study concentrates on two specific types of documents: Weistümer and witness deposition records (*Kundschaften*). These documents were created and used in nearly all the lordships of the region during the entire period under study—although in dramatically changing forms. They are connected to a central process in the delineation of unwritten law. Weistümer concern the so-called declaration procedures (*Weisungen*), that is the official promulgation of local legal regulations before manorial court assemblies (Latin: *placita*) to which local lords regularly summoned the inhabitants of their villages (or cities, if they were strongly under the control of the lord). Most Weistümer, only a few pages long, contain lists of explicit rules pertaining to the organization of the village, such as the arrangement of farmland, manorial obligations, and aspects of criminal law. In addition, many Weistümer contain descriptions of the reasons for and process of the declaration procedure itself. By contrast, witness deposition records are concerned with the written results of witness examinations. Primarily higher courts and administrative entities carried these out in order to confirm the content or validity of particular unwritten

norms in view of current events. The answers of the witnesses contain, along with explicit rules, diverse examples of compliance with or disregard for rules; accordingly, these documents could easily number several hundred pages, especially at the end of the period under study.

In research to date, the two types of documents have received strikingly different amounts of attention. Witness depositions are among the few medieval documents which, as a genre, have not yet been the subject of a greatly specialized study, but many studies of the Weistümer are available, of which several deal with the region under consideration.⁶⁹ The large printed source collections, many of them begun in the nineteenth century, which encompassed legal documents as they were defined at the time, included witness depositions only rarely⁷⁰ but Weistümer quite extensively.⁷¹ The assumption that Weistümer are records of oral statements misled many editors into being content with reproducing single versions that they deemed (on more or less valid grounds) to be the especially direct reflections of orality. Thus, in edited collections as in analytical research, it was seldom noted that many Weistümer exist in numerous late medieval redactions that differ from one another to varying degrees in both form and content. Precisely such discrepancies between variants furnish information about how writing was used. Above all, legal and sociohistorical investigations of the regulations contained in the Weistümer stand at the center of conventional Weistum research. It is only recently that scattered institutional⁷² and procedural aspects of village courts,⁷³ or related aspects of writing culture such as the creation and use of the documents, which are of primary interest here, have attracted attention.⁷⁴

For this study, the archival documents were indispensable. The differing availability of published editions suggested different strategies for examining Weistümer and witness depositions which may be described as intensive and extensive, respectively. In the case of the Weistümer, it would serve no purpose to add to the high number of examples available in printed editions. Yet new insights were revealed in the process of digging deeply into the Weistum versions of selected power complexes, uncovering all extant drafts, redactions, and copies to reconstruct the process by which Weistümer were adapted in different situations. In the case of the witness depositions, it was more worthwhile to explore examples that were as numerous and widely dispersed as possible. In the end, a corpus of more than 150 court cases, which included thousands of witness statements, was established. To support this exploration into how the documents were actually made and used, information from charters, court records, land lists, archival registers, and chronicles were also incorporated. The materials used also include a few “lucky finds” yielded through systematic searches in the archives of selected smaller and greater lordships, namely those of the dukes of Savoy, the cities of Bern and Zürich, the bishopric of Lausanne, the Cluniac priory of Romainmôtier, the Zürich Grossmünster college of canons and—as much as

they are extant—the local nobles.

Method and Structure of the Book

Each of the following chapters begins with an introduction to the particular research problem and the relevant historiographic and methodological questions. Here, however, we can lay out three main and often overlapping themes of the study. First is the establishment of unwritten norms, second is the process of recording them in writing, and third is the later use of these records.

To the first area of research belong the diverse procedures through which the actors claimed adherence to legal regulations and by which they disputed their definitions or contents. In the particular case of lordship rights, whose holders often lived far from the place in question, the problems start with the question of the local actors who actually exercised lordly rights and the interests they had in relation to such rights. The negotiation of unwritten law allows us to observe the practice of lordship on the ground between neighbors and in village courts as well as before high-ranking officials in the central courts of the great power complexes. These different levels of practice interacted closely during the production of the *Weistümer* and the witness depositions. This is because, at that point, the statements of residents about local law were often recorded with a view toward handling conflicts at the highest levels of the lordship organization and analyzed in the offices of the highest administrative agencies. Such procedures raise the important question of how actors of different social affiliations participated in the negotiation of law. It is also necessary to bear in mind Bourdieu's critique of traditional understandings of rules.⁷⁵ As with all explicit rules, local unwritten legal rules did not simply govern the actual behavior of actors but often served as a formal justification of behaviors that arose from altogether different motives, ranging from self-interest to extralegal moral (in the broadest sense) principles.⁷⁶ Methodologically, the reconstruction of everyday use of legal norms requires examination of the conventions by which the documents that describe such practices were generated.

Thus we have arrived at the second research theme, the techniques of the written recording and documentary presentation of law. Medieval literary scholarship has long discussed the theory that for written versions of oral expressions to be credible, the writer must use elaborate methods of textual composition and recontextualize the statement.⁷⁷ It is therefore necessary to study the changes in writing culture, in particular the techniques for composing and revising *Weistümer* and witness depositions, including their material forms; the formatting and layout of documents;⁷⁸ the use of stylistic figures, patterns of speech, and topoi; and finally the methods of editorial revision and compilation of, and commentary on, records that had already been created. Such techniques developed in close relationship with changing

cultural perceptions—not only of the legal order itself but also of social hierarchies, the traits of good lordship, and the meaning of the past.⁷⁹ The development of innovative techniques for composing documents cannot be explained simply in terms of reactive adaptations to new conceptions of order; they also actively contributed to producing and shaping such conceptions. Administrative documents are wrongly seen as unimaginative. In their admittedly bland and sober way, they spread a rich *imaginaire* of legal order, historical origins, and social harmony.

Studying how Weistümer and witness deposition records were created requires different methodological approaches that take into account the specific origins of these two types of documents. Weistümer were notably “fluid” texts, containing sediments of different periods. Their assembly served to establish legal regulations permanently and authoritatively. Precisely because of this, they had to be regularly recopied, newly arranged, and brought into compliance with other records of local law. A study of the changes in such organizing principles requires the in-depth examination of different families of extant documents in which different phases of editorial arrangement become discernable. In contrast, witness deposition records were usually generated all at once, during a single procedure for establishing a given law, and as a consequence were not revised later (although there are significant exceptions). Thus each set of witness depositions fundamentally reflects the creation and production techniques of its own time of origin, such that the material can be placed in chronological sequence to detect developments over time.

The third research theme examines the use of the legal records, once they had been created, in legal and political conflicts. During the last decade it has been shown—although usually with examples from literary texts—that medieval reading habits were fundamentally different from modern ones.⁸⁰ Legal-administrative documents, too, were subjected to a broad spectrum of reception and interpretation, from the discrete techniques of their arrangement and preservation in administrative offices to the ritualized forms of their public presentation.⁸¹ A more exact picture of these still fairly unknown deployments of writing can be gained from contemporaneous descriptions of use and the material aspects of the documents themselves. We must also examine the genealogies of administrative writing practices, which in part were based on liturgical and theological practices and thus bound up with largely implicit but powerful conceptions of order. More recent studies of such transfers of cultural techniques suggest a thesis that this book takes further: namely, that late medieval administration and law appropriated not only writing practices stemming from the realms of theology and liturgy but also assumptions inherent to those practices, such as those regarding the meaning of order, society, and communication.⁸²

The different methods used in this study tend to limit one another. The examination of the techniques and *topoi* used to represent laws highlights

the seldom-acknowledged difficulties and limits of Weistümer and witness deposition records as sources for everyday practice; yet analyzing how the documents were used puts constraints on the interpretation of their legal contents. Investigations into the production and uses of extant documents not only reveal a field of past human practice but also provide new perspectives on the methodology for an adequate interpretation of those documents by modern historians. The latter problems are constantly at stake in the discussion of medieval forms of the use of writing. They can, therefore, not be dealt with in this study in the usual way, with a short discussion of “source criticism.”

This study begins with two chapters that discuss procedures for dealing with local norms. [Chapter 1](#) describes the development of law declarations (*Weisungen*) and witness depositions as formalized processes of establishing the law. In contrast, [Chapter 2](#) discusses how individual actors debated, delegated, practiced, and enforced the law at local and overarching territorial levels. We next take up the study of changes in writing, production, and editing operations that undergirded the creation and arrangement of witness depositions ([Chapter 3](#)) and Weistümer ([Chapter 4](#)). [Chapter 5](#) returns to the forms of negotiating the law, but it focuses on the ways previously produced records were used both as material objects for display and as repositories for textual contents. This analysis introduces the subject of the interrelationship between changes in lordship organizations and changes in the use of writing, which not only involved an upheaval in the ways of understanding law but also produced new concepts of oral legal culture and of the meaning of the transition from orality to literacy.

CHAPTER 1

tribunals. Those conducting the depositions could thus investigate the disputed legal regulations before reaching a verdict in a specific case. Often lordship rights in a broad sense were subject to examination; by the end of the Middle Ages, rights regarding inheritance as well as civil and procedural law were increasingly examined as well. In the course of a deposition, several experts with different lordship affiliations were consulted as witnesses. The procedure was somewhat similar to witness examinations in civil or criminal fact-finding inquiries, as indicated by the fact that both procedures were often described with the same terms in the late Middle Ages: in Latin as *informatio* or *inquisitio*, in French as *enquête*, and in German as *Kundschaft*. For the purposes of this study, this type of procedure will be referred to as a “witness deposition.”

Law declarations were, by contrast, procedures carried out by the courts of local lordships. These courts are referred to as *Hofgerichte* or *Landtage* in German, and as *plaids généraux* in French; throughout this study, I refer to them as “manorial courts.” In these assemblies (which ideally were held regularly), representatives of local dependents and of their lordship came together to regulate local matters and hold court. This could also be the occasion for the solemn promulgation of a whole series of local laws that related to the claims of the lordship, such as legislative authority and dues, but that also dealt with the economic organization and communal life of the village. In the late Middle Ages, these activities were called *offnen* or *weisen*, from which derive the terms *Offnungen* and *Weistümer* (in French, *plaicts*) for the documents they produced.⁵ In this study, I use the verb “to declare” to describe the action and the nouns “declaration” or “declaration procedure” to describe the ceremony or venue in which it took place, while keeping the German term *Weistum* to refer to the document such an activity produced.

This chapter discusses the development of these methods of inquiry. (The practices of recording—or fabricating—their results in writing will be the topic of [Chapters 3 and 4](#).) Investigating the methods by which witness depositions and law declarations were conducted is not simply a question of researching the history of legal procedures. It is much more important to explain their social and cultural contexts. This avenue leads to questions about the situations in which the procedures were employed and about the possibilities for participation they offered to different groups. Moreover, the ways and means by which law was verified reveal tacit assumptions about the grounds for validity and changeability. Investigating the verification of law makes it possible to reexamine commonly held views about how unwritten law in the Middle Ages was equated with traditional ways of behaving, justified by its age, or considered to be the expression of one of many regional popular conceptions.⁶

The two types of inquiry are dealt with sequentially in this chapter, with two sections being devoted to each of them. The first two sections deal with the heretofore only patchily examined witness depositions and argue for the

distinctive change this type of inquiry underwent in the course of the late Middle Ages.⁷ During the decades around 1300, deposition inquiries began to rely more heavily on the model of witness examinations in civil and inquisitorial procedures in church courts, and therefore shifted their focus from forming a consensus among local notables to establishing facts. A second rupture occurred around 1400 as the courts of individual power complexes developed their own procedural variations as a way to define legal customs more clearly as elements of the legal order of larger geographic regions. The second two sections are concerned with declaration procedures in manorial courts. Here the main problem is the relationship between oral procedures and the written production of the *Weistümer*, which began to increase only in the fourteenth century. The research on declaration procedures in manorial courts relies mainly on *Weistümer*⁸—an approach that is as obvious as it is problematic. On the one hand, *Weistümer* claim to reproduce oral legal declarations more authentically than any other genre of document. On the other hand, precisely this claim to representation places the documents under the suspicion of recording oral legal declarations in stylized form. Such stylization can be examined through the use of court decisions and deposition records, for it is here that declaration procedures, their participants, and their courses of action are described from other perspectives.

From Consensus Formation to Fact-Finding

Before taking up the discussion of changes in witness deposition procedures, a few remarks must be made concerning who actually conducted the witness depositions. Only local manorial courts had declaration procedures at their disposal, but they, along with church courts at all levels and the regional courts of great nobles or communal lordships, initiated witness depositions. Furthermore, unlike declarations, witness depositions were also used outside of court proceedings. Three basic types can be distinguished, according to their basic arrangements. The first type consisted of examinations that the court conducted at its own initiative, in which examiners asked a series of witnesses the same set of questions about the laws involved before they pronounced a decision in a case.⁹ In the second type, the court conducted a separate deposition for each of the two parties in the dispute, which could propose the witnesses to be consulted and the questions to be put to them.¹⁰ In depositions of the third type, courts were not directly involved. Instead, ecclesiastical and lay holders of lordship commissioned someone to conduct a deposition about the rights they claimed. In the documents thus produced, the one who commissioned the deposition sought to legitimate his claims in light of legal and extralegal forms of conflict negotiation.¹¹ These three types coexisted during virtually the entire chronological period under study here,

with the exception that the second type is attested only from the beginning of the fourteenth century onward. The deposition types were all fundamentally subject to the same procedural developments that will be addressed in the discussion that follows.

Consensus-Oriented Procedures of the Thirteenth Century

The oldest deposition procedures in the region under study are from the beginning of the thirteenth century. They exhibit a marked similarity to the *enquêtes par turbe* that spread through the kingdom of France at the same time.¹² In order to clarify disputed legal regulations, approximately a dozen witnesses were summoned. These witnesses conferred with one another and formulated a collective, definitive statement of the regulation to be defined. This procedure was used, for example, to clarify regulations for the use of woods and meadows,¹³ lordship and jurisdiction rights,¹⁴ claims to taxes and dues,¹⁵ and rights of patronage over churches.¹⁶ The consultations followed the framework of a court or arbitration procedure, and thus their results were not recorded in a separate document but rather were included in the records themselves, which the court issued along with its ruling. Usually the names of the consulted witnesses were included, but not what each individual had said. Instead, the scribe recorded the final result at which the group of witnesses had arrived together.

In many cases, the rule defined by the witnesses applied so specifically to the case in question that their statement already anticipated the decision of the court. An example of this is provided by the official court decision charter recording an arbitration hearing that was adjudicated by members of the lay and ecclesiastical elite of the Bernese Oberland in 1239. This panel decided a dispute between the cloister of Interlaken and the knight Heinrich von Wimmis over the regulations governing the use of a fish pond. The court record describes how the disputants together swore in and consulted ten specifically named witnesses from the region. The conclusion of their statement is introduced by the words “All of those sworn in said ...” (“*Hii omnes iurati dixerunt ...*”) and appears to be the verdict itself, which is followed only by the closing formula in the records. Numerous records of the thirteenth century follow this pattern. The remarks of the adjudicating officials are preceded by “from the account of [there follows the list of witnesses] I discovered” (“... *ab ipsis relatione cognovi ...*”); “we established through reliable witnesses that ...” (“... *invenimus per testes fideidignos quod...*”); or a remark that the decision was approved “by the advice” (“*de consilio*”) of witnesses.¹⁷

Although the regulation being stated was contested between the parties, and the witnesses often had to take an oath to tell the truth, the records give scarcely any details about how the witnesses justified their statements. They neither say that it was according to old or godly regulations nor list

examples of the regulations being followed on previous occasions. It was virtually impossible to disprove statements made in this way. How the witnesses arrived at their collective statements doubtless varied greatly, and we have only fragmented evidence of the procedures. For German-speaking regions there are a few examples in which seven witnesses agreed on a statement and seven other witnesses unanimously swore to its correctness.¹⁸ An arbitration record from 1266 states that a dispute could be decided through a witness deposition only if its findings were unambiguous.¹⁹ In contrast, a document of the canon chapter of Lausanne from 1236 states that in the case of contradictory answers, whichever rule can be agreed on by the majority of consulted witnesses should be followed.²⁰ Despite all the differences in the details, this type of procedure had one consistent feature: in practice, it relied on the idea that the court relinquished the delineation of valid laws to the deliberations of the group of witnesses.

Such procedures are reminiscent of the jury trials of the early Middle Ages. Janet Nelson said of these, in a summary of Karl Kroeschell's observation, "Law in the early Middle Ages was what experienced men declared to be and used as the law."²¹ Unlike the case in jury trials, valid law in these instances was defined by people who were explicitly identified as witnesses and thus were clearly differentiated from the actual members of the court.²² Courts delegated to such groups the duty of defining the applicable rules in a dispute and thereby relinquished to them a great deal of their discretionary authority.

In contrast to the declarations of manorial courts, it was not the dependents of a particular lordship who participated in such witness depositions but rather mostly high-ranking persons with noble or knightly titles. A dispute over jurisdiction in the region of Emmental in 1236 was decided by an arbitration panel that included two priests and five knights. They consulted as witnesses around fourteen men for whom no titles were given, but also four other priests and eight other knights.²³ In the witness deposition from 1263 about the causes for which the Cluniac priory of Romainmôtier could levy special fees (*aides*) on the inhabitants of the village of the same name, they consulted, among others, two free nobles (*Edelfreie*) and two knights, as well as two priests, a deacon, and the priors of no fewer than four cloisters in the area.²⁴ Generally, clerics appear with similar frequency as witnesses in legal witness depositions of the thirteenth century.²⁵ The prominence of the witnesses consulted indicates that the witness deposition procedures of the thirteenth century were aimed not least at involving a wide circle of ecclesiastical and lay notables of the area in the process of delineating local law.

Changes around 1300

There were countless short-lived experiments with new ways of conducting

witness inquiries about unwritten law, often tailored to a specific occasion. But apart from this, a substantial change took place between 1270 and 1300 that modeled proceedings increasingly on the principles of Roman-canonical procedure. In the new form of inquiry, the old procedure was fragmented in three ways. First, court inquiries were increasingly separated both temporally and spatially from the actual court hearings. The judges appointed commissioners, who consulted witnesses in their places of residence. Second, the collectivity of witnesses was dissolved. Instead of meeting together, the witnesses were now each sworn in individually and consulted separately from the others (“secrete”) in individual interrogations. Third, the commissioners no longer asked the witnesses only a few direct questions about declaring the disputed legal regulations but rather divided the subject of the examination into separate questions or articles. The results of the consultation thus no longer constituted a single formulated statement on which the witnesses had agreed, but rather several statements that could diverge more or less from one another.

An early example of the third change and the shift to an inquiry that included more separate questions is a record created in 1296 at the order of the counts of Savoy. They wished to clarify their lordship relationships around Lake Geneva, where they had founded the town of Morges a few decades before. In fact, the first question concerned the overall legal situation for which the inquiry sought evidence, namely that the House of Savoy had direct lordship (*dominium directum*) over the area. The witnesses, however, had to answer additional questions in their individual interrogations. The second question was whether the area belonged to the castle Vufflens; the third concerned the exact legal form of this affiliation and whether the city lay within the *seynoria* of Vufflens. Finally, the witnesses had to specify the nature of the Savoyard claim to Vufflens and answer whether this lordship was a tenure that could be bestowed on local nobles and which was required to be regularly renewed.²⁶

Such questions could be multiplied almost endlessly. An inquiry about the rights to use the forest on the shores of Lake Brienz likewise contains four questions.²⁷ This trend was taken even further in a witness deposition from 1312 concerning the right of presentation to the church of Hilterfingen, which is composed of no fewer than twenty-seven separate questions or *articuli*.²⁸ The first and the last questions on the list would be asked during most later witness depositions: the witnesses had to state their personal information (age, place of residence, and lordship affiliation) and give information about the representativeness of their statements: they were to confirm that these facts were public (*manifestum*) and well-known (*notorium*), that they reflected common talk (*vox et fama*). In such procedures, the witnesses were no longer required merely to pronounce lordship rights but also to justify them.

During this time *articuli* that were asked directly on normative

statements were noticeably pushed to the margins and in the end disappeared entirely. A late and accordingly significant example is provided by a witness deposition from 1397. It concerns a dispute between the lord of Oron and the bishop of Lausanne. Under debate was the boundary between the jurisdictions of the two lords. The questions no longer required simply an explicit description of this boundary.²⁹ Instead, the witnesses were required to recall events such as imprisonments, executions, and confiscations by officials, which could indicate the regular practice of lordship rights in the contested area. Large parts of the witness statements were concerned with a rather crude indicator of the practice of lordship rights—the right to hunt and to claim the skins of dead animals. The deposition contains scrupulously exact statements about when, where, and by whom a dead animal had its skin removed and taken to the castle of one of the two lords. Numerous witnesses recounted their memories of the price paid for the hide of a brown horse that had broken its leg on the village bridge.³⁰ The lord of Oron did not want to keep the hide of an ox himself and sold it to the person who brought it in for three pennies.³¹ More to the taste of the lord was the boar's head (mentioned almost as often) with which a peasant named Leysin dutifully came and knocked on the castle door.³² Such a method of inquiry shows the way in which unwritten legal rules had a quasi-objective existence before their definition in court procedures; they were applied in everyday activities and thus could be ascertained in the same way as facts.

This type of procedure produced the witness deposition records that provide such a detailed insight into the daily practice of lordship. Indeed, when the witnesses on occasion formulated actual rules, they now clothed even these in facts. They thereby claimed not to have articulated the rule themselves. They described bygone occasions that allowed them to place a normative statement in the mouth of a third person as a quotation. Such statements aimed to recount everyday speech about the law and to identify the knowledge of the cited rule as a product of everyday activities.³³ In a witness deposition from 1437 about a wine crop claim advanced by the lords of Blonay, one witness remembered how his sister had been married in the territory of Blonay. He went there to help her with the wine harvest. In the evenings, he was appalled to see that officials of the local lord came to take away part of the painstakingly gathered crop. He asked his sister and—perhaps because he could not believe her—also his brother-in-law how the officials were able to do this. Both explained to him the right of the lord, which he now repeated back to the commissioner.³⁴ The delineation of valid law appears here as a problem of ascertaining facts about the daily activities and obedience of the people.

As a consequence of the new functions of witnesses, their number and social status changed. While in the thirteenth century there were seldom more than a dozen witnesses included in a witness deposition procedure, the commissioners of the fourteenth century more often aimed at numbers of around forty. This is in accordance with the maximum number of witnesses that a party in a canonical civil procedure was allowed to call.³⁵ Now more people were consulted whom the documents described as “peasants,”³⁶ while often a village priest was the highest-ranking witness.³⁷ However, by no means did all the “peasants” who were interrogated belong to the lowest social classes. Many of them held lower manorial offices or were tithe tenants, and are therefore best described as the peasant ruling class.³⁸

Significantly, the first examples of witness deposition records that divided the disputed question into many articles also included statements from numerous specialists in the learned law who had studied at the universities of northern Italy.³⁹ Under their influence, forms of inquiry modeled on the example of Roman-canonical civil, defamation, or inquisition procedures—which had spread north from southern Europe across the Alps in the middle of the thirteenth century—found their way into witness depositions about local legal customs. In such processes, the witnesses had to declare assent to or denial of the assertions expressed in individual points or *articuli*.⁴⁰ According to the same process, the latitude given to those questioned in procedures for law-finding was restricted to assenting to or contradicting a series of points about the alleged legal situation.

The inquiries thus modeled themselves on the Roman-canonical process of a distinctive division of labor among the witnesses, who reported mere perceptions, and the judge, who drew legal conclusions from them.⁴¹ The methods for establishing laws and facts were so similar that in some cases they blend into each other.⁴² In the course of the fourteenth century, the new procedure for the production of legal documents was accepted in rural areas throughout the entire area in question, as well as by such holders of communal lordship as Zürich, Bern, and Luzern. In the sixteenth century these procedures became the standard for the supreme court of the Holy Roman Empire, the Imperial Chamber Court (*Reichskammergericht*), which pronounced judgment on and thus sometimes decided which legal customs had validity in the relevant regions.⁴³ The understanding of legal custom was fundamentally altered by the adoption of this procedure. The truth of the witnesses’ statements no longer was authenticated simply through their oath, their reliability as persons, and their consensus, but rather was accessed through the comparison of details in the statements of different witnesses. The objects of such hearings were no longer legal rules. In fact, the impetus behind such procedures was the assumption that legal rules could be ascertained, proven, and known in the same way as facts.

Innovations of the Chancelleries

In the fifteenth century the greater territorial lordships began to conduct witness deposition hearings that no longer investigated merely local legal relations but rather aimed to ascertain rules that could claim validity in their entire territories, or at any rate in large subdivisions like bailiwicks, counties, and districts. Thus the procedures began to distance themselves from the model of Roman-canonical processes. The commissioners often now exceeded without a qualm the maximum of forty witnesses dictated by canon law. In a 1484 witness deposition carried out at the order of the court of the city of Constance, for example, no fewer than 349 witnesses appeared on behalf of one of the parties.⁴⁴ In addition, the chancelleries adapted the inquiry procedures to the topography of lordship within their territories.⁴⁵ In what follows, two of these special developments will be presented. A first section is on new ways of conducting witness depositions developed by the territorial administration of cities such as Bern and Zürich. These cities increasingly integrated the local courts in their hinterlands into witness depositions. Second, several sections will follow on the modifications that the Savoyard courts earlier had introduced into witness deposition procedures, for they show with particular clarity how the focus on regulations that would be valid throughout ever larger unified geographic regions resulted in broad changes to the understanding of unwritten legal customs.

Local Courts and Cities' Territorial Lordship

Beginning in the mid-fifteenth century, the courts of the confederated Swiss cities with large territories gradually ceased using only itinerant commissioners to gather witness depositions. Instead, either the court or the litigating parties asked several local courts in villages or towns within the city's territory to interrogate witnesses about the applicable law. The local judges then consulted witnesses who were under their jurisdiction and had the results recorded in the form of charters that they themselves sealed and then sent to the central authority.⁴⁶

For example, around 1478 the cloister of Interlaken presented a series of witness depositions in the form of charters before the court of the city council of Bern (*Ratsgericht*). With them, the cloister hoped to defend its area of legal jurisdiction against the claims of the neighboring town of Thun. In preparation for the court inquiry, the provost of the cloister had called on the local courts of small local lordships such as Aeschi, Unspunnen, Krattigen, Spiez, and Interlaken and requested that their judges consult witnesses who lived in the area. The judge of the court district of Interlaken, which included the cloister itself, had issued four different charters over two days in order to establish separately the statements of each hamlet that

belonged to the court's territory: that is, one each for Flüeh, Leissigen, Habkern, and the principal village of Interlaken itself.⁴⁷ In general, places of residence rather than individual witnesses are the most prominent primary units of examination in such inquiries.

All the consulted local courts asked the same questions, which were formulated by the provost, but apparently they could avail themselves of very different methods in doing so. To establish the statements of the two most prominent witnesses from the small territory of Unspunnen, for example, they produced two different charters. In the first, the local lord appeared as the issuer and judge, who consulted his bailiff as a witness. In the second, the two switched roles. The bailiff now verified what he had heard while acting as the judge who interrogated his own lord.⁴⁸ The judge of the village court of Krattigen did it all very differently. He made a declaration regarding the disputed legal situation in the name of all those in attendance, although he then had four other residents give endorsements to his statement.⁴⁹ The principle of consulting witnesses individually, which had been widely observed since around 1300, appears to have become more lax in this type of inquiry; instead, local notables once again took part in the inquiry. This process bears some resemblance to inquiry methods from the early thirteenth century, but it can scarcely be explained as a survival of the old procedures. For in spite of their differences, all these inquiries were consistently based on one innovation that had been implemented since the fourteenth century: the witnesses now had to give statements not directly about the valid law but rather about indications for its existence. The delegates who were examined by the local courts filled a need that was characteristic of the late fifteenth century: identifying laws as a characteristic of territorial unity.

Witness deposition inquiries to verify that legal regulations were accepted throughout larger geographic regions had to take account of the legalpolitical structures of those regions. Geopolitical relationships like those in the region around Lake Thun, where the consultation of 1478 was undertaken, could be encountered in large regions of contemporary Europe: in one legal form or another, all the relevant villages and small lordships were subject to the same overlordship—in this case that of the city of Bern, whose court had the final decision in cases of dispute. Large parts of the judiciary and the local courts, however, were in the hands of various small lay and ecclesiastical lords who practiced local law. These lords could easily have taken it as an infringement of their jurisdiction to have their subjects interrogated as witnesses by the commissioners of the centralized authority, the city of Bern. Such tensions could be avoided by the delegation of the inquiry to the courts of the local lords. The recording of the results of the inquiry in a series of locally produced charters shows the topography of power within the region in which the investigated law had to be recognized.

In the Pays de Vaud, too, witness deposition procedures aimed increasingly at the verification of unwritten rules that could claim validity in large geographic regions. Here, however, this development took place under the auspices of a lordship administration that, by comparison to the territories of the German-speaking cities, was strongly centralized and had largely eliminated local lords. Nonetheless, as mentioned previously, inhabitants of Vaud still claimed the privilege of being judged according to their own legal customs.⁵⁰ This raised new problems, as litigating parties increasingly took appeals from their local courts to the central Savoyard courts which, since they mainly practiced learned law, were scarcely familiar with the customs of regional courts. Before the central court, litigating parties from Vaud could not only call on unwritten laws regarding lordship and jurisdiction but also claim that their *consuetudines* incorporated specific rules regarding procedure, inheritance, or civil law. The personnel of the local Vaudois courts could themselves take a stance on such claims, because they appeared before the central territorial courts of the Savoyards as participants in a specialized regional body of law that needed to be investigated and made explicit with the help of experts from the region.

The territorial courts demonstrably drew on notables from Vaud for this purpose from the middle of the fifteenth century.⁵¹ In 1437 witnesses at an inquiry described a procedure that had not been practiced for several years but in which several witnesses had formerly taken part. According to their recollections, when the Savoyard ducal council heard a case from Vaud, it issued a written summons to particular people from several cities in Vaud, mostly well-known nobles or notaries. These individuals then took part in the court procedure and described how a given question would be decided by their local courts. The notables conferred with one another before one answered on behalf of the group. This process was especially emphasized at the inquiry in 1437. The documents state that those who were consulted in the earlier procedure had not been interrogated but rather had been speaking as counselors and experts (“non ... per modum examinis, sed ad consulendum et informandum animum iudicis”). Their duty had consisted of giving their *opinio*.⁵² Since the witnesses attended the entire procedure, they had the opportunity to express their views on each legal practice that became relevant during the court procedure.

Over the course of the fifteenth century, the method of rigorous individual interrogation was adopted by the counselors of the central Savoyard court as well. The first recorded instance of this, in 1430, was a hotly contested attempt to subject ten individuals called as counselors to the Savoyard central court (notables from cities in Vaud, namely Moudon, Vevey, and Lutry) to individual interrogation.⁵³ The court was to rule on a conflict over jurisdiction rights in the city of Lausanne which raised complex

procedural questions.⁵⁴ Among those summoned for this case were several high officeholders, some of whom bore noble titles or at least were licensed notaries.⁵⁵ Most of these men had apparently also been summoned for earlier court procedures at the territorial court.⁵⁶ In contrast to what had been the usual practice until then, they were denied entry to the actual court proceedings. Instead, the commissioners of the court intercepted them at their lodgings. There they showed the men a list of nine articles that described some of the procedures of the two conflicting Lausanne judges. The notables were required to speak to their legal validity in individual interrogations.

Most of the nobles refused such individual questioning as a breach of their ancestral right to confer among themselves. To begin with, they doubtless perceived individual interrogation—to which only peasants were subject at the time—as a curtailment of their opportunities to participate in the definition of the law. Additionally, they argued that one cannot answer questions about what is just without hearing both parties and their arguments at a designated place and time.⁵⁷ Apparently the witnesses resisted isolating unwritten legal rules from the context of a concrete court proceeding and making it a static body of knowledge as opposed to a somewhat more situational reflection.

The Savoyard court jurists appear to have decided to defy such conventions. From the 1430s onward, the Savoyard courts regularly carried out individual interrogations of notables in order to clarify ever-broader aspects of a legal regime that would be binding for all of Vaud, regarding, for example, courtly procedural regulations,⁵⁸ the standards to which official documents had to conform in order to be accepted as evidence,⁵⁹ or aspects of inheritance, contract, and credit law.⁶⁰ Gradually, the courts also widened the range of legal customs that they assumed could be objectively delineated through individual interrogations. The resistance of those consulted is no longer visible in subsequent records. The procedure was also modified from the approach documented in 1430. First, the court no longer summoned its witnesses to the center of territorial administration but rather sent commissioners from one city in the Pays de Vaud to another, to consult them in their places of residence. Second, the commissioners no longer showed the witnesses the court case itself but rather asked about evidence for the relevant general legal rule. To this the witnesses often stated their *opiniones* as they had earlier in the territorial courts, in that they related, for example, how they would decide a contested question if they were confronted with it as a judge or sworn member of a local court.⁶¹ But the commissioners were no longer content with such statements of opinion. The new procedure required the reporting of facts. Thus the commissioners asked again, insistently, about which court the witnesses knew of in which such a case had actually happened, who the judge was, who the parties were, and in what year, month, and day this had taken place.⁶² As mentioned before,

individual local lordship rights were now also elements of a common legal order created in the context of a procedure that assumed unwritten law could be reliably defined on the basis of factual evidence.

Regional Customary Law: An Assumption Underlying New Procedural Forms

The standardization of procedure made possible inquiries in which commissioners investigated both the particular rights of individual lords and the commonly applicable rules that were under debate in a particular court case. Thus the witnesses fell into two differently composed social groups, each of which had to answer its own series of questions. In the first group, peasants from the place under discussion were interrogated. To them, the commissioners posed almost exclusively questions about evidence for the validity of a disputed local lordship right. In the other group, high-ranking witnesses were asked about the validity of applicable regulations of procedural or civil law; this group included free nobles, knights, notaries, and high officials of the ducal administration such as bailiffs, castellans, judges, and tax commissioners. These individuals did not come from a single place but rather represented all the large cities of the territory.⁶³

In a case from 1437, for example, members of the noble families of Blonay and Champion disagreed over local lordship rights in the vicinity of the town of Bulle. The Blonays claimed that their ancestors had exercised these rights without interruption until they were forced to temporarily cede these as collateral to the Champion family, to whom they had become indebted. Their debts had since been satisfied through the annual proceeds of the lordship rights. According to the legal custom of the region, the lands should therefore have been restored to the Blonays by the creditors. The witness deposition with which the Blonays sought to establish their position was divided into two parts: in the first, people from the relevant villages stated whether the ancestors of the present Blonays had exercised the contested lordship rights uninterrupted until the cession.⁶⁴ In the other, notables from all the Pays de Vaud were consulted regarding the relevant credit law.⁶⁵

To a certain extent, the allotment of specific questions to members of different classes indicates group-specific ranges of experience. Local inhabitants were in fact especially well acquainted with the details of local lordship rights. In the same way notables, who regularly took part in pronouncing legal decisions as jury members, judges, and notaries, could most easily make judgments about principles regarding unwritten regulations of procedure and civil law. Nonetheless, many peasants could doubtless have given answers to many of the questions that remained reserved for elites, such as methods for the restoration of pledges, on the basis of their own experiences. The bifurcation rests on the fact that inquiries concerning particular and universal aspects of the law had grown

into two separate procedures. Indeed, it remained a bifurcated process in the fifteenth century, although inquiries of both types were now undertaken using the same investigative techniques. The division of the witnesses also contributed to the characteristically early modern trend of dividing the people into ranked groups equipped with different political responsibilities and legal competences. Thus there appears to be a connection between two concepts that arose at this time: that of a unified customary law, albeit divided into different domains, and that of a unified territorial population, albeit divided hierarchically into ranks.⁶⁶

The spread of the new procedure was a component of a broad change in the cultural perception of legal custom. It was hardly a coincidence that the first extant attempt of a Savoyard court to define universally applicable rules by means of individual interrogations fell exactly in the year 1430. In the same year, the dukes of Savoy issued the *Statuta Sabauda*, the first broad territorial law code intended to be valid in all their territories. In the Pays de Vaud this claim to validity would later have to be rescinded under pressure from the local estate assemblies, which insisted that the people of Vaud maintain the privilege to be judged according to their own legal customs.⁶⁷ Nonetheless, even here interaction with unwritten legal rules changed as a result.

The jurists of the central territorial court understood Vaud's legal customs by analogy with territorial law, which was valid in the entire region, or with the *jus commune* in which they were trained. Such *jurisperiti* crafted ever more elaborate and complex interrogations in the course of the fifteenth century.⁶⁸ They increasingly aimed at placing a given regulation in a coherent framework of norms. Thus a witness deposition about the criteria of validity for testaments, for example, could also deal with wide-ranging related questions concerning restrictions on the freedom of testators, inheritance law itself, or the features of legal documents in general. It could also raise such fundamental questions as what was understood by the term "tenant" or "appurtenance"⁶⁹ in a given region; what meaning was assigned to concepts such as "manifest" or "notorious";⁷⁰ or what was meant by a *consuetudo* as such.⁷¹ Such activities clearly indicate that the legal customs under investigation were considered components of a comprehensive, systematic set of norms, a customary law. Such a system can really only be thought of by analogy to a written collection of laws—as an unwritten law book, so to speak.

The procedure itself assumed that a rule, to the extent that it could really be claimed to have validity, must be part of a coherent system of regulations for Vaud and that knowledge about it must be traceable throughout a broad region.⁷² Many factors may have contributed to the development of the concept that there was such a regionally unified customary law. To some extent, the different local legal expressions of the Pays de Vaud may well have undergone some actual standardization through the increasingly

intensive territorial lord's administration.⁷³ Certainly the new witness deposition procedure made the concept of a regionally unified, unwritten legal system feasible in an area where previous practice had apparently not produced any regional unification.

Customary Law as Expert Knowledge

In the course of the later fifteenth century, Savoyard witness deposition procedures in the Pays de Vaud increasingly concerned themselves with gauging the competence of the witnesses in legal matters. This partially expressed itself in witness deposition records that included ever more detailed information about the personal identities of the witnesses. Starting around 1300 records of questions noted not only the name but also the place of residence, age, and rank of each witness.⁷⁴ Beginning in the mid-fifteenth century, the witnesses' level of knowledge was also considered. Witnesses now had to state whether they could read and understand Latin or describe the court in which they had gained their experience as judges. In addition a question that probably baffled as many witnesses as it does modern readers was included, namely whether the witness was a *consuetudinaris*.⁷⁵

The concept of a *consuetudinaris* appeared in regional sources from the middle of the fourteenth century at the latest. The term describes almost anyone who took a specific role in a court proceeding, namely as a jury member or counselor for the court regarding the definition and application of legal customs.⁷⁶ When the commissioners made the question of whether a witness was a *consuetudinaris* into a way to establish his personal identity, they gave this concept a new meaning. They implied that one could be a *consuetudinaris* apart from one's role in a current court case, in the sense of a personal qualification as a specialist in *consuetudo*. Many witnesses were apparently surprised by this new usage of the word. They shied away from making a definite statement with the necessary clarity. They said, for example, that they were accustomed to speak about *consuetudines* and to use ("practicare") them in court, or the reverse: that they had had little occasion to take part in law-finding.⁷⁷ For many the status of *consuetudinaris* was bound up with the practice of a specific office in which one was obligated to advise about legal customs. Thus one noble said that he was at the present time no longer a *consuetudinaris*, but that he had been one when he had held the office of castellan in the Pays de Vaud.⁷⁸ Other witnesses adopted the commissioners' understanding of the term to some extent, saying that they were "a little bit" ("aliquantulus") *consuetudinaris*.⁷⁹ One witness said he had heard a legal regulation quoted by *consuetudinarii* as well as *populares*. Reflecting precisely the commissioners' distinction, he thus divided the experts in customary law from the remaining population, who were understood to be mere laymen.⁸⁰

As legal customs were increasingly regarded, by analogy to written law,

as a structurally similar legal system with different content, the *consuetudinarius* came to be seen as a variant of the legal professional, the *jurisperitus*, to whom an alternative set of standards applied. Many witnesses who described themselves as *consuetudinarii* stated that they could neither read nor understand Latin.⁸¹ Especially clear concepts of the identity of *consuetudinarii* were expressed when they were explicitly compared to university jurists. One such comparison was made by a knight named Barthélémy de Saint Martin, who was consulted as a witness in 1470. He unambiguously described himself not only as a *consuetudinarius* but also as a doctor in both canon and civil laws. When asked where he gained this knowledge of legal customs, Barthélémy listed more than thirty nobles, high officials, and notaries by name as guarantors, saying they were not only great *consuetudinarii* but virtually “doctors of custom” (“doctores consuetudinis”).⁸² He further remarked that *consuetudinarii*, unlike jurists, did not concern themselves with ritual formulas. They also avoided such expressions as “if it be the case that,” “quasi,” and other subtle juristic sophistries. *Consuetudinarii* dressed “in popular fashion” (“vulgari modo”) and spoke in coarse Latin. In spite of this, they were highly learned in their own way.⁸³ What Barthélémy meant by “popular” should not be misunderstood. The majority of witnesses whose knowledge of common legal customs the commissioners trusted as *consuetudinarii* were nobles or town dignitaries. Whoever emphasized the “popularity” of customary law and its experts alluded primarily to the contrast with learned judges.

How can we sum up the development of witness deposition procedures between the thirteenth and fifteenth centuries and relate it to shifts both in conceptualizing the law and in the socially determined opportunities to participate in its definition? From around 1300, witness depositions lost their earlier consensus-oriented character. They relied increasingly on the model of individual interrogation derived from Roman-canonical civil law and the inquisition procedures of church courts. Thus it was implied that laws could be verified in the same way that facts could. This change expressed itself clearly in the further development of procedure in the fifteenth century. In fact, this procedure varied widely from one chancellery to another, but it assumed a law that was uniformly applicable; it assumed that valid regulations had to be anchored in the knowledge of the entire people of the larger territory. On the whole, this resulted in the depoliticization of law-finding. Regulations were less and less defined by means of negotiation and instead were seen as entities that belonged to geographic districts; they needed to be discovered, verified, and known in the same way as facts.

Through the change in procedure, the possibilities for different social groups to participate in the establishment of legal order also shifted. Local ecclesiastical and lay notables, once the typical witnesses, appeared less frequently in this role after 1300. Instead, members of the peasant population were interrogated more often. Notables were later reintroduced into the

procedures by the Savoyards, this time as specialists in a regional customary law that was conceived of as coherent by analogy to written law. The new procedures, however, more strongly restricted the opportunities for witnesses in all categories to influence the organization of the legal order, because their task was no longer to express an opinion but was restricted to representing a stable knowledge shared by the entire population. In contrast, the discretionary power of the officials and jurists of the central territorial courts, who interpreted the statements provided by the witnesses, widened, as will be demonstrated later.⁸⁴

Since the nineteenth century, Germanists and legal historians have been inclined toward an assumption that the oral legal culture of the Middle Ages equated law with traditions that were rooted in the people of a region through a combination of narratives and customs. Paradoxically, such an understanding is most visible in the late phases of the development of procedure. First, only late procedures in which the witnesses were consulted about detailed events assumed that laws could be deduced from customary habits. Second, only late procedures were built on the presumption that unwritten laws conformed to a legal understanding that was spread throughout the entire regional population. Finally, only the model of written law helped gain acceptance for the idea that unwritten legal customs had to be investigated as components of a coherent system of norms, a customary law. Such assumptions were thus in no way remnants of an old unwritten culture. They were connected far more closely with the practicalities of learned law and the organizational needs of the new territorial lordships.

Law Declarations in Local Courts

Thanks to the Weistümer we have ample information about the process by which unwritten laws were passed down in manorial courts. These documents, which originated sporadically in the thirteenth century and increasingly in the fourteenth and fifteenth centuries, do not merely contain series of local legal regulations. They also suggest more or less forcefully that even before they were written down, their contents had been declared from memory in a formal procedure at the local manorial court assembly. Some Weistümer regulate the course of these assemblies in the form of normative instructions. Others, such as that of the cloister of Engelberg mentioned at the beginning of this chapter, preface the actual legal statements with a prologue that describes how the lord arrived at the place and called together his peasants to record the laws defined in the subsequent Weistum. It is worth dwelling on these vivid descriptions for a while, for they have made an enduring impression on the perceptions of declaration procedures in modern research.

According to the accounts in Weistümer, manorial court assemblies followed strongly ritualized forms. The lord convened these gatherings at a given place one to three times annually, on fixed dates. The dependents were obliged to appear under pain of fine. Many Weistümer describe first the arrival of the lord and his festive reception by the peasants. Mainly Weistümer emphasize that the court assembly, in addition to the law declaration process itself, also included acts of exchanging gifts, eating and drinking together, and other forms of sociability, which could have a marked symbolic character.⁸⁵ Weistümer often contrast the right of the lord to be hosted by the people of the place before and during the assembly, the so-called right of hospitality (*Gastungsrecht*), with the corresponding rights of the inhabitants. Many records state that the lord and his followers spent the proceeds of substantial fines on drinks during the legal assembly.⁸⁶ Such ritual depictions oscillate between celebrating the preeminence of the lord over his peasants and evoking a camaraderie between them that rested on reciprocity and patriarchally influenced forms of interaction.

The pronouncement of the law was to be embedded in such rituals. Most Weistümer describe these moments much less exactly than the background events. Some Weistümer report in direct speech how lords elucidated local legal relations with successive questions (along the lines of, “Who is the lord here?”; “What dues may he collect?”; “Who may keep his cattle in the woods?”). While such Weistümer are not especially numerous, they have shaped some basic assumptions of modern research. These include, first, the idea that law declaration assemblies were there to regulate a binary relationship between the “inferiors” and their “superior,” that is, between the totality of local peasants and their lords.⁸⁷ Second, declarations are generally seen as alternative media that made it possible to pass down without writing a definitive law that was nonetheless unaltered.⁸⁸ Third, Weistümer give the impression that they arose from the procedures of oral legal declarations, reproduced them faithfully, and therefore in the end took over their functions and replaced oral tradition.⁸⁹ Gadi Algazi summed up conceptions of such unwritten but still orderly legal traditions in the concise phrase that peasants filled the role of “living archives” of legal knowledge to which lords could refer on the occasion of manorial court sessions.⁹⁰

A certain skepticism about such a depiction of declaration procedures is justified, because in most Weistümer normative and descriptive elements merge fluidly with one another. In this way, these documents present manorial courts as traditions that were static, and to some extent idealized, in both form and content. These seem oddly detached from the diversity of actual circumstances that must have provided the immediate circumstances for each declaration. This is especially evident when—in the best tradition of source criticism—one compares the picture provided by the Weistümer with

the one provided by other genres of documents. Thus plentiful charters, for a long time scarcely noticed in the research, can bear witness to the concrete local conflicts in manorial courts which formed the basis for declaration ceremonies, and witness deposition transcripts contain statements from witnesses who answered questions about legal regulations in which they reported their memories of declaration ceremonies. Thanks to such documents, the picture of the declarations conveyed through the Weistümer can be scrutinized. In what follows, we must first discuss the circle of participants in manorial court assemblies. What sorts of people are concealed by the terms “peasants” and “lords”? Later sections will take up the political functions and the course of action of the declaration procedures.

“The Peasants”

Manorial courts frequently have been understood in modern research as encounters between a lord and his local peasants. Such a description of the protagonists of legal declarations seems clear at first glance, but it is actually quite abstract. Even the question of who exactly took part in the manorial court on behalf of the dependents is by no means trivial. The usual description in modern research of these participants as “peasants” does not entirely reflect the terms commonly used in late medieval documents, such as “associates of the court” (*hofgenossen*) or “men” (*homines*).

The idea that obligatory attendance resulted in something like a cross section of the entire local male population works best in the case of the manorial courts of those who held territorially defined jurisdiction rights, a group that admittedly grew during the late Middle Ages.⁹¹ But much more often, a lord who claimed primarily landlord rights presided over a manorial court. In such cases, the obligation to attend referred primarily to people who had leased lands from him and accordingly owed him yearly rent. Most contemporaneous documents expressed this situation in a picturesque phrase: the duty to appear at the manorial court was placed on those who held land from the lordship that was at least “seven foot-lengths wide and seven footlengths long” (“sieben Schuh weit und sieben Schuh breit”), as recorded in various Weistümer from the vicinity of Zürich.⁹² Although manorial courts were on the whole thought of as masculine domains, a few women, especially widows, could also be subject to the obligation of attendance thus defined;⁹³ in addition, numerous male heads of household were exempt from it by the same standards, for in many places a majority of the households worked land that they did not hold directly from the lordship but rather in a secondary lease relationship from the hereditary tenants (*Erblehensträger*). Under such circumstances, only a relatively small portion of the resident male population was obliged to take part in the manorial court.⁹⁴

In the same way, the circle of participants in the manorial court of a

landlord could extend far beyond the local population. The Weistum for the Aargau village of Holderbank, for example, names the participants in a declaration ceremony of 1470 and mentions their places of residence. They came from villages in the vicinity, including Niederlenz, Möriken, and Hendschiken, and from the neighboring town of Lenzburg, but apparently none of the individuals listed by name was a resident of Holderbank itself.⁹⁵ Especially in areas that were close to cities, a majority of hereditary tenants could consist of urban citizens who used the legal form of a peasant lease to invest capital in agricultural lands, which they in turn leased to local producers. Thus one Weistum from Albisrieden near Zürich ordered the residents of the village to take care that the urban citizens from whom they held their lands appeared at the manorial court.⁹⁶

Finally, the obligation to take part in the manorial court of a lordship could also extend to members of neighboring lordships. Complex entanglements of property-holding and lordship relationships led to local legal constellations in which one lordship overlapped with another in manorial or legal authority. Most of the cloisters in the vicinity of Zürich administered not only their own manors, over which they were lords, but also individual farmsteads that they held from the college of canons as hereditary tenures, much like peasants would have done. Like the peasants, these cloisters were required to have their fiefs renewed and there are charters of re-enfeoffment created by the college for the cloisters of Wettingen, Kappel, Ötenbach, Selnau, and St. Martin auf dem Zürichberg, and the cloister of the Dominicans in Zürich. All these charters bound the renewal of the tenure to the stipulation that the tenant cloister dispatch a member to the local manorial court assemblies.⁹⁷ The “court associates” or “dependents” on whose presence the manorial court especially relied included not least urban citizens and representatives of neighboring lordships.

“The Lords”

No less complex was the composition of those participants in the assembly who assumed the role of lordship. In practice the “dependents” at a manorial court confronted not an individual lord but a multitude of lordly representatives. To some extent the Weistümer themselves made this explicit. The records for places under the lordship of cloisters particularly emphasize that an abbeß, abbot, or provost as manorial lord shared the presidency of the manorial court with a noble representative (*advocatus*). Statements that, for example, refer to the presence of “honorable men, nobles, and knights” at the manorial court recall that often many lords—among whom the local lordship rights were shared—needed to be represented.⁹⁸

The actual holder of local lordship rights seldom personally took part in

the manorial court. According to most descriptions of specific court assemblies, underlings presided over the court as judges and thereby ruled “in place of” (“anstatt”) the lord, “on behalf of said” (“von heissens wegen”) lord, or “in the name of” (“im Namen”) the lord. For example, the minor lords as well as the nobles of Mont relinquished their attendance at their court assemblies to their castellans. According to witness deposition statements, the castellans in turn were represented in their absence for years by subaltern officials (*nunci*) at the manorial court; presumably, these were low-ranking dependents from the relevant village or a neighboring one.⁹⁹ At best the lords personally took part in their own manorial courts when they themselves had a suit to bring, and when they called for a law declaration ceremony.¹⁰⁰ Nonetheless, a lord could send a representative to the judge even when bringing a suit. At the manorial court of the Aargau village of Döttingen in 1398, the local cellarer presided in the name of the actual manorial lord, the abbot of St. Blasien, while another representative of the abbot, from the nearby town of Baden, appeared before him.¹⁰¹ One representative of the lord requested the other to have the court associates declare the local regulations regarding the use of pasture land.

The fact that the activities of the manorial court were dominated by representatives of the lord imparted a very practical meaning to the symbolic representation of lordship rights. Descriptions of manorial courts in witness deposition statements and charters often mention the court staff of office as an emblematic object that fulfilled this function. The representative of the lord gave this staff to the representative of the *advocatus* as soon as there was a question to be decided that fell under his authority, and high officials passed the staff to those they delegated to preside over the court.¹⁰² During an actual declaration ceremony, the court staff served to represent lordly power while distinguishing it from the person who exercised it in that instance. In declaration texts, the depiction of the lord apparently fulfilled a similar function. The description of his arrival did not depict the regular routine of the manorial court but rather reflected the symbolic language with which the Weistümer described the lordship system.

Political Functions

The presence of different lordly representatives at the manorial court is directly linked to the scarcely ever acknowledged fact that, through their declarations, these assemblies not only regulated the relations between lords and their peasants but also decided conflicts between lords at all levels. This expansion beyond regulating relations between lords and peasants is most readily apparent when manorial courts settled conflicts between the lordship and its local officials and *ministeriales*. Another key task of the manorial courts involved the resolution of conflicts between the local manorial lord

(*Grundherr*) and the jurisdictional lord (*Vogteiherr*). Charters repeatedly show how representatives of manorial and jurisdictional lords or other competing lords settled conflicts over the division of fines and fees through the declarations of their shared dependents.¹⁰³ Such questions dominate the text of many Weistümer.¹⁰⁴

Furthermore, suits were often brought before the manorial court of a lordship by other lords and their dependents. During the second half of the fourteenth century, citizens of the small city of Büren regularly appeared before the manorial court of the neighboring village of Pieterlen, which was subject to a different lordship. There they raised objections to the declaration of the boundary lines between the two lordships and thereby defended their own interests as well as those of their lord before a foreign manorial court.¹⁰⁵ While Weistümer often define who must appear before the manorial court, they conspicuously stipulate no restrictions on admittance. Weistümer and witness depositions show that those assembled at a manorial court included not only members of a limited local population but also any number of notables who had a vested interest in the legal order of a particular place.

To be sure, there were eminently practical reasons to settle conflicts between lords that concerned local legal relationships before village manorial courts. The residents and notables from the area assembled there were in a better position than higher-level ecclesiastical or territorial courts to survey the complex local legal network, with its competing interests arising from the usage, manorial, and judicial rights of multiple parties. Especially in areas with less-developed systems of territorial administration, there were no legal entities below the level of the Holy Roman Empire that could claim jurisdiction over several lords involved in one conflict. Documents that were produced from higher-level jurisdictions, which were generally legitimized “from above,” might enjoy higher prestige. Yet the regulations legitimated “from below” by the declarations of manorial courts were often more practical for, in addition to the dependents, these also included the local officials and elites against whom they were to be enforced or under whose supervision they would be implemented in everyday life.

It would be naïve to describe manorial courts simply as forums for the harmonious and well-ordered settlement of disputes. In depositions witnesses often argued that the mere fact that a lordship regularly held a manorial court in a particular place showed that the place was under his control.¹⁰⁶ According to the same logic, conflicts between lords were often ignited by the question as to which court’s jurisdiction particular people and areas were subject. Thus the canon chapter of Amsoldingen charged the local *ministeriale*, Berchtold of Amsoldingen, in a list of grievances written around 1300, alleging that he had alienated the chapter’s vineyard and sought to “weaken” and “oppress” its manorial court. Berchtold had forbidden all people who lived on the far side of the Amsoldingen lake to take part in the court assembly of the chapter. Instead, he had begun to hold

his own assembly in front of his castle in Stocken, even though this castle fell under the jurisdiction of the chapter and furthermore had never been the site of a court assembly.¹⁰⁷ In 1374 the priory of Romainmôtier complained to Countess Bonne of Savoy regarding similar circumstances in the village of Bursins, over which it claimed all rights of jurisdiction. According to the priory, the noble lords of Mont had recently begun to hold their own court assemblies in the cemetery of Bursins.

In 1482 inhabitants of the city of Lausanne composed a petition of grievance regarding their bishop and his officials. One of the complaints concerned a confidant of the bishop named Ludovicus Besson. When the lawful *maior* of the village of Lutry had called the manorial assembly at the usual time and place, Besson had seized control from him by force. Besson had suddenly appeared with an armed retinue, mounted the court bench, and named himself the new *maior* in front of the appalled assembly participants. A little later he began to hear cases as *maior*. In such conflicts the summoning of dependents to the manorial court functioned as a means of challenging the claims to jurisdiction of competing lords and establishing one's own claims on the ground.

Weistümer are thus misleading when they depict manorial courts as forums that regulated the interaction between a lord and the totality of his dependents. Instead, what is manifest in court documents and witness depositions is the significance of these assemblies for the settlement of conflicts between lords and for their relationship to their officials or *ministeriales*. The references in charters to agreements between lordship and peasants in manorial courts are actually relatively few, mainly due to the fact that such agreements were seldom documented in writing. The constellations that were distinguished for legal purposes (lord-peasants and lord-lord) should not be translated directly into social oppositions. The rights of lords were often pled by local lordly officers who themselves were dependents of their lords, much in the way the role of dependent peasants could be filled not only by peasant producers but also by urban citizens, monasteries, or other corporate bodies that themselves claimed lordship rights in the vicinity. Regulations encountered in manorial courts correspond with legitimation “from below” not because they reflected the will of the lower social classes but rather because relations among notables were negotiated here without recourse to the higher-level lordly courts. In this form of delineating the law, the definition of vertical dependent relations between a lordship and its dependents was tightly interlocked with the horizontal delineation of rights between competing lordships.

Variations in the Transmission of the Law

From the standpoint of a modern understanding of law that is focused on

legislative codification, one may be tempted to regard the manorial courts' function of passing down law as compensation for the deficits of a society with less writing: regularly held legal declaration ceremonies seem to indicate a makeshift attempt to ensure a stable local legal order that would later be far better protected through written legal texts. At first glance it seems that late medieval Weistümer were also committed to such an understanding, for these often stipulated that the local law should be recalled to memory at each assembly of the manorial court through a declaration.¹⁰⁸ In many Weistümer, moreover, the recording of legal regulations was explicitly justified by the fact that it would eliminate the uncertainty of oral transmission.¹⁰⁹

But to what extent were declaration ceremonies suitable—and, indeed, intended—for relaying legal content unchanged over long periods? To answer this question, we must examine court records and witness deposition records alongside Weistümer. On this basis, there are four questions to be discussed in the following sections concerning the implementation of declaration procedures: What did medieval actors say about the mnemonic function of declaration ceremonies? For what reasons were they held? What processes therefore contributed to their operation? And what role did writing play in them? Ultimately, the relationship between the oral declaration ceremonies and the written Weistümer needs to be reassessed through an analysis of conflicts over how exactly to go about the declarations, among other things.

Mnemonic Functions

Without a doubt, declarations in manorial courts had great significance for late medieval actors. In some witness depositions, witnesses answered questions about valid laws by referring to the contents of legal declarations.¹¹⁰ In others witnesses boasted that they were particularly knowledgeable about local law by emphasizing that they had regularly taken part in the manorial court of their village for decades.¹¹¹ In 1456 a witness from Kölliken related how he was brought to the manorial court by his father as a small boy. There, someone had ordered him and others of the same age to listen well to how the rights of the lord were declared so that they would later know them as adults.¹¹² Especially in witness deposition records from German-speaking Switzerland in the fifteenth century, witnesses stated over and over, in a somewhat programmatic way, how important manorial courts were for passing on knowledge of local legal regulations from one generation to the next.

Witness deposition statements in particular indicate the limits of transmitting legal knowledge through manorial courts. They show, on the one hand, that relaying local legal knowledge did not take place exclusively at the manorial courts but rather to a considerable extent also in everyday

conversations. When witnesses were systematically asked how they knew about a disputed regulation, they attributed it nearly as often to declarations in manorial courts as to other sources: for example, to conversations with older acquaintances and relatives—strikingly, often with their mothers—or to conversations in the tavern.¹¹³ On the other hand, the repetition of legal declarations did not itself guarantee uniform views about valid law. In one case recorded in 1435, the witness deposition about the rights of the millers of Dielsdorf to the water in the stream reveals particularly divergent memories of the manorial court's declarations. At one end of the spectrum stood the statement of a former sub-bailiff, according to whom the millers could use the water "as often and as much" ("so oft und viel") as they wanted.¹¹⁴ Others said that they had heard the more restrictive regulation that the millers could use the brook, but one-third of the water volume must always be allowed to flow past the mill through the village.¹¹⁵ A few reported that the millers were entitled to this water volume, but only on Saturdays and on the eves of the name-day feasts of the twelve apostles.¹¹⁶ Lastly, one witness said that, according to the declaration of the manorial court, the millers could not divert the water into their mills at all without obtaining the express permission of the village.¹¹⁷ Depending on the matter, even smaller discrepancies among the witness statements could make it very unclear what rule actually had been declared by the manorial court.¹¹⁸

The memories of legal declarations were not contradictory only on the basis of faulty memory; some witnesses had "lapses of memory" or adjusted their statements out of loyalty toward or fear of one of the disputing parties. The witness Hensli Schuhmacher provided another reason when he said that "what they pronounced in one year, they did not pronounce in another."¹¹⁹ In other witness depositions, too, witnesses cast doubt on the validity of a regulation by saying that these had first been declared at the last manorial court assembly—or conversely, had not been declared for the last few decades.¹²⁰ Clearly, legal declarations themselves contained noticeably different variations in content from one time to the next. In practice their great significance seems to have rested less on the claim to pass on legal knowledge unaltered than on the claim to guarantee the application of regulations to present conflicts. It is now necessary to explicate this more closely.

Circumstances

That the contents of the declarations vary has much to do with the immediate causes for the declaration ceremonies. Demonstrably, the manorial courts of many lordships were often not called for years, sometimes decades, at a time.¹²¹ In other places, the actual solemn manorial court, summoned two or three times annually, can scarcely be distinguished from the sessions of a local court summoned only as needed (but usually

more often), in which only a few sworn representatives and the judge had to take part.¹²² At the manorial court infractions of the regulations were prosecuted; disputes over boundaries and inheritances were decided; property exchanges through sale, pawn, or inheritance were made public; and the *maior*, herdsman or foresters were installed in their offices. In many places, representatives of the lordship collected fines for infractions of the rules from inhabitants, in addition to regular dues, which were often to be paid at the assembly.¹²³ All these activities could entail controversy over what local law prescribed.

When questions about the law were raised, the primary aim was not necessarily to recall what norms had previously been declared but more likely to reach an agreement in the present conflict. The numerous extant charters that were issued regarding the declaration of a specific regulation at the manorial court give at least as much insight as Weistümer into the practice of legal declarations in the manorial courts, though they are scarcely acknowledged in the research. For the rural court of Buchsgau, the first real extant Weistum that lists a comprehensive catalogue of regulations is from the fourteenth century. Yet there is a court record from as early as 1286 that records a single regulation declared by the rural court of Buchegg when the abbot of the cloister of Trub asked how long one must possess another's plot of land without objection before one's possession of the land is considered uncontested.¹²⁴ Countless documents from the fourteenth and fifteenth centuries similarly recorded individual regulations that manorial courts had declared: for example, on a village's meadow-usage rights, on the amount of the fine for a specific offense, or on the prohibition of marriage between dependents of different lords.¹²⁵ Legal declarations in such contexts were less reiterations of a stable body of laws in a ritual that was clearly set apart from the other activities of the manorial court assembly (such as litigation or the publication of transactions) than clarifications of regulations that were carried out on a case-by-case basis during such activities.

Especially in western Switzerland, a prominent activity of the manorial court—and in many places almost the only identifiable one—concerned the collective walking of local fields and paths, the so-called *viationes*.¹²⁶ Through such processions the local order was passed on entirely orally, although in a very different way than Weistümer suggest. Here bringing to mind the legal order began not by recalling explicit regulations but rather by collectively inspecting a site. The participants heard arguments over changes to the farmlands and paths that had occurred since the last meeting. They mediated these and agreed among themselves about whether to impose fines, order construction and repair work on fences, or forbid particular kinds of cultivation. In this way, decisions were reached through tacit or explicit compromises between the participants as much as through the recall of earlier circumstances.¹²⁷

Generally, declaration procedures made no sharp distinctions between

the recall of established legal regulations and the negotiation of agreements arrived at in the moment. An interesting example of this is provided by the witness deposition record of a dispute that flared up repeatedly in the manorial court of Grüningen. There the lordship claimed the right to confiscate the goods of criminals who were sentenced to death.¹²⁸ A man known as Old Lehmann declared that the law had stated that the heirs of the executed person should receive his body, but the lordship should receive his goods. Participants in the assembly had protested repeatedly that the regulation applied only to movable goods and had to be more precisely stated as “to the relatives, the body; to the lord, the movables” (“den fründen den lib und den herren dz varend guot”). Several witnesses related how Old Lehmann had silenced their objections by guaranteeing that for a long time the lords had confiscated only the movables, but not the immovables, and this would certainly not change in the future.¹²⁹ The agreement reached here was not simply about the wording of a regulation but also about its implicit interpretation.

If a writer wanted to preserve such an agreement in writing in a Weistum, he needed to choose one or the other formulations of the regulation—neither of which would fully correspond to the entire accord reached by the manorial court. This points to a fundamental problem in the written recording of oral tradition:¹³⁰ the actual tradition to be recorded and the accompanying explanation can often be separated from each other only with difficulty, because the two could be closely mingled together in oral speech.

Procedures

The specific practices used at declaration ceremonies varied dramatically according to time, place, and situation. We have already seen that the popular perception that declarations were generated as answers given by peasants to questions asked by their lords is not always true. At least in individual cases, it has been demonstrated that dependents and even women could ask for a declaration—in Weissenburg in 1477, for example, regarding the rights to common land.¹³¹ Also, the person responsible for declaring the law could vary, even in a single court. Thus in Pully in 1368, the declaration was made by seven men whom the assembly had chosen for this task in advance. One of the documents produced for the case describes this procedure as “the form that had been customary since old times” (“forma ab antiquo consueta”). But those old times were not particularly old. A document produced at the beginning of the fourteenth century still mentions that twelve men chosen as sworn representatives had to do the declaration at the manorial court of Pully.¹³²

For a few manorial courts there were vaguer instructions, according to which the declaration was the responsibility of the “oldest” or the “oldest

and most honorable” participants in the assembly. In the fifteenth century, especially in the vicinity of Zürich, it was often a few older men who declared the law for years: for example, in Oberdürnten, Old Hans Reisen; in Dielsdorf, Old Keller; and in Grüningen, the aforementioned Old Lehmann. Many of these men held lordly offices.¹³³ Sometimes the lord himself declared the law. Thus in 1374 the local lord asked the court assembly of the village of Ringgenberg on Lake Brienz that he be allowed to declare the law on the descent from the summer pasture in the mountains, and the assembly assented.¹³⁴ The need to come to an agreement about who should declare can itself indicate that the person to whom this duty fell—or to whom it was eventually attributed in the documents—could depend on the subject of the current inquiry.

Regardless of who had instituted the declaration ceremony, the usual assembly participants subsequently had the opportunity to raise objections to the formulations. According to some Weistümer, this procedural step was to be repeated for each and every clause throughout the transcription of whole series of regulations. This stage could involve fierce exchanges between conflicting interest groups, as was characteristic of manorial courts. Weistümer give at best vague instructions about the procedures through which the opposing interests were to be aligned with one another during declaration ceremonies. The Weistum of Romainmôtier, however, is among the few that explicitly state that no participant in the manorial court assembly may speak without permission of the lord.¹³⁵ Yet despite the stipulation, found in a few records, that a regulation declared in the manorial court must receive either unanimous or majority approval,¹³⁶ democratic forms of decision-making cannot be assumed.¹³⁷ In this regard, the manorial court was fundamentally not much different from the better-researched urban councils and citizen assemblies of the same period. Like these bodies, declaration assemblies could be governed by ideals of rigid hierarchies and unequal rights of participation, and they could exhibit a notably authoritarian influence.¹³⁸

Declaration ceremonies did not inevitably result in universally applicable regulations. Often individuals requested exemptions for themselves. During the declaration ceremony in Pully in 1368, a representative rose to claim that the obligation to taxation being proclaimed might very well be valid for others but he and his ancestors had been exempted from it from time immemorial.¹³⁹ The Weistum of Appels from 1327 begins with a list of local residents who complied with the established regulations declared at that time and recorded in the subsequent text. A note appended to the last two names, however, indicates that these residents had obtained exemptions from individual regulations for themselves on the evidence of privileges owed to them.¹⁴⁰

It seems to have been particularly important that the authoritative local actors who were personally concerned with a regulation approve it during

the declaration ceremony. This was emphasized by witnesses who recounted their memories of declarations during court procedures. For example, witnesses in one case cited the rule that had been declared about the placement of sluices in the stream, pointing out that the millers had not opposed it.¹⁴¹ They remembered a declaration regarding the division of jurisdiction between the territorial lord and the steward, and added that the representatives of the steward had been present at the time. They described how the local lord had given his assent to the inheritance rules as they were declared.¹⁴² In such statements, the declaration procedure appears not as a legislative process by a general, authoritative corporate body, but rather more as an arrangement of various agreements between the concerned individuals, groups, and corporate bodies.

The Use of Writing

The common perception that oral declarations were the forerunners and functional equivalents of written *Weistümer* is misleading in that it tends to gloss over the fact that at times written documents were used alongside the oral declarations at the manorial courts. The witnesses' declarations in the manorial court did not necessarily serve as recollections of legal content that was not available in written form. Often the participants in such procedures relied on written records as well.¹⁴³ In a witness deposition from around 1325, witnesses from the village of Rüeggisberg near Bern reported how, in the local manorial court assembly, the representatives of the manorial lord as well as those of the steward compared oral declarations with the contents of scrolls they had brought with them. Legal declarations often began with someone reading "in a loud and understandable voice, word for word" from a parchment list or slip of paper. In such cases, the participants in the court assembly were subsequently asked questions about what had been read.¹⁴⁴

Such records were more personal mnemonic aids than authoritative representations of the declarations, for the written formulations could be revisited by the manorial court and amended according to still unwritten regulations. Thus the manorial court of Döttingen in 1398 conducted an inquiry about the "*consuetudines, privilegia, jura, proprietates*" that a representative of the lordship had read out from a parchment scroll. As the *Weistum* put it, a transcript consisted of regulations that had been partially written down earlier, partially drawn from memory, and partially agreed on due to current circumstances, and they were now confirmed "in the mode of innovation, renovation, or imitation."¹⁴⁵ It is in the sixteenth century that we find the first substantial evidence that legal declarations at the manorial court approximated the acts of homage, by which officials always read out the same version of a *Weistum* as a binding statement of the law without allowing debate over its revision and confirmation.¹⁴⁶ In contrast, the earlier declaration procedure resembled the proceedings at annual urban citizens'

assemblies, at which secretaries read out individual statutes established by the city council along with charters of privileges, some of them generally applicable, some of them granted on a case-by-case basis. Cities also debated whether, in a given inquiry, old determinations should be repeated or new ones adopted.¹⁴⁷

Representatives of lordships, in particular, presented written documents originating from entirely different contexts when they attended legal declarations at manorial courts. In 1459, at the manorial court of Seftigen, the provost of Amsoldingen protested against the declaration of boundaries for his own lordship district by submitting charters from his chapter.¹⁴⁸ In Weistum texts themselves, regulations were sometimes justified by appeal to old charters, land lists, and interest records.¹⁴⁹ Through the submission and approval of regulations from memoranda, charters, and land lists, provisions were incorporated into Weistümer that had their origins not in declaration ceremonies but in quite different contexts for the delineation of law, such as in agreements between lords or in the privileges of a territorial lordship. In [Chapter 4](#), we will see in greater detail that the contents of Weistümer as a whole often came into being only in very loose connection with the business of the manorial court. There we will also discuss the fact that the recording of Weistümer in many cases had less to do with conflicts at a local level than at a level higher up in the lordly hierarchy, sometimes reflecting the local officials' needs to document their rights before the court of a territorial lordship.¹⁵⁰

In the end, how can we assess the relationship between declaration ceremonies (*Weisungen*) and the records about them (*Weistümer*)? Although Weistümer editors sought to establish continuity between them and oral declarations at the manorial courts, historical analysis must also focus on the overlooked ruptures between them, for Weistümer neither incorporated only regulations passed down through oral declarations nor perfectly depicted the declaration procedures. Charters and witness deposition records allow us to correct the image of manorial court assemblies in several respects. First, declaration ceremonies settled disputes not only between a lordship and its dependents but also in the most diverse of constellations: between dependents, between lords and their officials, between rival lords, and so on. Second, the delineation of laws at manorial courts was mingled closely with their practical implementation and thus was not very stable. Written records of Weistümer served a very different purpose. These aimed less at the immediate implementation of law than at its long-term stability, which required strongly stylized depictions of the manorial court. In Weistümer, legal authority could not be attributed to the diverse and changing actors who actually agreed on and practiced the law. Instead, the local order was depicted in an authoritative, almost constitutional abstraction as a “timelessly” valid relationship between a superior and a clearly separated set of inferiors, between a lord and the totality of his dependents or “peasants.”

Thus Weistümer legitimized the regulations they contained, which were derived from the manorial court, but at the same time, they transcended the statements that had originally been closely bound up with particular situations and persons.

* * *

Not only were witness depositions and declarations at manorial courts very different procedures for the clarification of unwritten law; they each also took many different forms. Nonetheless, the main trends in the late medieval development of these procedures can be related to one another and to a general change in legal concepts. Both procedures collected statements from members of the middle and lower classes. This was less an expression of democratic forms of dispute resolution than the result of attempts to organize laws according to the geographic boundaries of their validity. Whereas witness depositions were increasingly used to explain regulations as components of territorial legal orders, declarations at the manorial court constituted the law of a particular place. Often they concerned the settlement of conflicts among multiple lordships and their respective officials rather than the regulation of the relationship between a lord and his local dependents.

A marked change in the cultural understanding of unwritten law is initially apparent in the witness deposition procedures. Here the chancelleries of church courts and great power complexes modeled themselves increasingly on the basic procedures of witness examination in Roman-canonical civil and inquest procedures. This development coincided with a move away from procedures that were concerned primarily with the formation of consensus among notables. In their place arose rigid interrogations based on the assumption that law involved established facts that were expressed in conventional activities and did not need to be agreed on but only discovered. In the fifteenth century further procedural variants developed that made it easier to root law, thus understood, in large geographic regions and to understand the regulations being investigated as components of a coherent regional customary law. Although this was unwritten, it was understood by analogy to written legal codes.

Declaration procedures, by contrast, underwent a much less marked change, but they were subject to new interpretations in connection to their increasingly frequent recording in written Weistümer at the end of the Middle Ages. Charters and witness deposition records show that declarations in manorial courts were mainly concerned with negotiating individual agreements between relevant notables in specific situations. In contrast, Weistümer depict this activity as a ritualized act: the pronouncement of whole series of regulations that had always been pronounced in an ancient ritual involving lords and peasants. The simplified

depiction of the protagonists and the course of events of the declaration served not least to legitimate the contents of the Weistümer through an unchanging tradition that purportedly reached back to the time before their transcription.

The reorganization of the witness deposition procedure and the increased production of written Weistümer coincided with ruptures in the conception of law in three regards: in both cases, there were changes from negotiable to stable norms, from isolated regulations to coherent systems of regulations, and from a law legitimated through agreement between notables to one legitimated through the knowledge of homogeneous, geographically defined populations. The result of these developments expressed itself initially at the end of the Middle Ages, as unwritten law was increasingly equated with tradition and the awareness of the people as a whole. This conception hardly reflects a primeval or folkloric understanding of law; instead, it resulted from the adaptation of procedures for defining unwritten law to the new requirements of lordship institutions.

CHAPTER 2

lordships that exercised qualitatively different rights. In medieval legal documents local networks of the reciprocally defined claims of legal entities, who are described either as “lords” or as “dependents,” appear as *the* rural legal order.

Especially in German-speaking areas, social historians have until recently considered the relationship between lords and peasants as the central problem of late medieval rural lordship organization, and have therefore relied heavily on the descriptive categories of contemporary Weistümer and charters. As a pioneer of this strand of research, Otto Brunner bears the credit—and blame—for having overcome a constitutional history that relied too heavily on nineteenth- and twentieth-century conceptions of constitution and state. For Brunner the local rural legal structure rested on personal relationships between lords and peasants, which could not be described in terms of modern institutional categories.⁴ These relationships were forged through feelings of loyalty and conceptions of justice that committed them to a reciprocal exchange of benefits, so that the peasants were obligated to obedience and dues only insofar as their lord promised them “protection” (*Schutz und Schirm*) in exchange. The cause of conflicts, according to Brunner, was less the relationship between lords and peasants than the relationships between lords. These lords pursued feuds against one another, not least because they had to defend their subordinates from the assaults of other lords.⁵ This harmonious picture of the relationship between the rulers and the ruled is rooted in an idealization of authority by the self-confessed National Socialist Brunner—a background that the majority of German-speaking research has unjustly seen as inconsequential.

A few years ago, Gadi Algazi persuasively showed that the talk of loyalty and reciprocity conforms to an ideological construct that unilaterally championed the views of the lords, and, moreover, which was whitewashed by Otto Brunner: a construct that only poorly conceals the actual and often forcible oppression of the peasants.⁶ Algazi showed that the descriptions of the lordpeasant relationship in legal documents are more normative than descriptive—but without going so far as to subject the categories of lords and peasants to the same rigorous ideological critique. Much of the new social history of the French and Anglo-American type abandons the organizational categories of contemporary legal documents, largely without comment.⁷ Instead, they place the study of social inequalities and economic dependencies of rural society in the foreground and occupy themselves with tensions between interest groups that elude description, using categories like “lords” or “peasants.”

Older works of institutional history have already shown that the local level of late medieval lordship organization was characterized by enormously diverse allocations of legal competence, interdependence between lordships, and relationships of delegation.⁸ When legal documents describe “peasants” or “dependents” as the subjects of lordship rights, they

often refer less to individual people than to societal or communal institutions. The holders of these rights are almost always described as “lord” or *dominus*, although the term could refer to very diverse people, including someone who exercised the lordship by the power of an office (such as provost or abbot), a baron with a local power base, an urban patrician who invested his business earnings in lordship rights, a knightly *ministeriale* who was ruling as a vassal and who was thereby connected to one of the great territorial courts, or a powerful territorial lord himself.⁹ Similar distinctions can be made for the “peasants.” This description of people in legal documents can refer to urban patricians who themselves were the holders of lordship rights in the area, agricultural producers of different social classes, or even day-laborers and craftsmen.¹⁰ In sociohistorical as well as institutional-historical terms, the possibilities for describing rural society according to admittedly contemporary but strongly formalized legal descriptive categories such as “lords” and “peasants” appear quite limited.

All the more pressing, then, is the question of what meaning these descriptive categories carried in the concrete contemporary forms of dispute resolution and cooperation. Later records of witness depositions, which were focused on real-life actions as evidence for the laws’ existence, yield particular insight into the ways and means by which actors outside the court agreed on the rights of the lordship and the privileges of the peasants and put them into concrete practice.¹¹ The liveliness of the witness statements should not deceive us regarding their original aim. In the context of a witness deposition procedure, the court was interested less in details that were relevant to practice than in those that were relevant to law. At the same time, the witnesses described specific incidents which, as far as they were not merely known from hearsay, necessarily took place not only in a legal but also in a specific experiential context. This experiential context was especially evident when it came into conflict with the goal of describing the law. Examining such tense relationships furnishes valuable insight into how the lordship organization functioned at the level of individual actors. This also makes it possible not simply to employ the descriptive categories used in normative documents—such as “lords,” “peasants,” and “legal customs”—as departure points for describing social order that resist further analysis, but rather to examine what meaning these terms carried in everyday forms of cooperation and conflict.

The investigation that follows reconsiders the practicalities of dealing with lordship rights, which lie outside the perspective of a conventional constitutional history but became important in similar ways in very different legal-institutional contexts from the beginning to the end of the period under investigation. First, we take up the question of which actors mainly confronted the peasants with lordly claims at the local level: besides the actual holders of lordship rights, one must discuss not only officials but also others who exercised lordship rights through delegation, and the ways in

which such delegations functioned. Second, we will investigate, through the example of a few specific conflicts about lordship rights, the field of conflict between legal descriptive conventions and the social dynamics of disputes over the lordship of a region. Third, we must reconsider the relationship between the practice of lordship and legal customs. Particularly toward the end of the period under consideration, courts increasingly assumed that the origin of legal rights lay in regular patterns of practice. The course of conflicts, however, can often be better understood if one asks whether the actors were not also abiding by completely other types of norms. This makes it easier to grasp the consequences that followed when conflicts were judged from the point of view of old customs.

The Branching-Out of Lordly Administration

Beginning around 1300 witness depositions concerning lordship rights consisted primarily of questions regarding how a lord had enforced the rights that he claimed. One might expect that the witnesses answered these questions at least partially by recounting incidents in which noble and ecclesiastical lords confronted their dependents to confirm orders, enforce regulations, or collect payments. Yet the witnesses cited at the beginning of this chapter, who listed their lord as their friend, seem to have received hardly any attention from the latter on an everyday basis. These witnesses were also asked whether they had seen any official lordly acts of the two quarreling brothers of Chalon, both of whom had spent some time in the region. At best the witnesses mentioned in their answers, along with formulaic phrases about the oath of loyalty, that they had seen the lords riding into or out of the castles or heard that they had named officials.¹² Apart from such solemn occasions, not a single witness furnished an example of a specific piece of manorial business during which he appeared directly before one of the two lords.

From the answers to the individual questions of the commissioners, it is evident that even witnesses who expressed their strong personal ties to their lords did not necessarily know very much about them. Guillaume had inherited the title of a prince of Orange and lord of Arlay from his father and was usually described with the appropriate titles in the court records. Yet only one witness could correctly answer the question of where this Orange and this Arlay actually were, namely “in Provence” and “in Burgundy,” respectively.¹³ Even the notary Jean Criblet, a serf and tenant of Chalon who had served Guillaume for three years as the substitute (*Statthalter*) of the castellan of Yverdon, answered that he did not know, although he must have been to the area. In another place in his statement, Jean noted proudly that he had traveled to Rome, Avignon, and Burgundy.¹⁴ It is perhaps not so surprising that lords who controlled such extensive territories as the lords of

Chalon seldom appeared in the field of view of their local populations. Yet even in witness depositions that concern lords of small and even tiny lordships, practically all the talk is about the activities of their officials. The relationship of these witnesses to their lord did not involve the type of intimacy that we associate with concepts like friendship and loyalty.

Instead the witnesses drew from a seemingly inexhaustible supply of accounts about people who acted in the name of the lord. The abundance of information in the witness statements about the actions of officials must have been perceived as irritating background noise by contemporary courts, which wanted to establish the rights of the lords themselves. Even to the modern view, the information scattered throughout the witness deposition records about the lower levels of lordly administration seems confusing and disparate, not least because it attests to very diverse local structures, terminologies, and divisions of labor among officials. Nevertheless, in what follows it is possible to sketch a few patterns of the delegation of lordship duties—such as the collection of dues and the implementation of local regulations—that witnesses described regularly, although in conjunction with very diverse organizational structures. We will examine these patterns of daily activities to see how lordship was delegated and which forms of participation in the practice of lordship arose from that delegation. Although the precise social status of the parties is difficult to establish, they nonetheless give information about the ways in which they were linked to one another, to lords, and to the dependents of lords and about how practices of exercising lordship fit into a broader context of rural forms of cooperation and conflict.

While witnesses' statements in depositions regarding the activities of their lords remained quite sparse, they went into great detail regarding officials in the broadest sense, whether they were called *castellani*, *officarii*, *deputati*, *nunci*, *receptores*, or *mandati*. Even the witnesses who had so little to say about the lords themselves in the conflict between the brothers Chalon made very precise statements regarding officials. The witnesses saw how they rode into each of the four lordships, stayed in the castles, saw to their maintenance, and ate and drank. Moreover officials collected dues, fines, and labor obligations for their lords; leased mills; and exercised jurisdiction rights by holding *curia* or *banchus publicus*.¹⁵

Unlike in the formalized depictions of the activities of lords themselves, the descriptions of the more everyday manorial activities of their officials make evident the diversity of individual perspectives from which witnesses could experience lordship. Among the dependents of the lords of Chalon who were examined was one whose nephew had acted as dues collector for Guillaume in Montagny. A second had held the office of accountant for Guillaume; a third had once served as a substitute for Guillaume's *mistralis* in the village of Yvonand outside of Grandson; and a fourth numbered among the people who had guarded the castle of Grandson on commission

from Guillaume.¹⁶ At this level the boundary between rulers and ruled was very blurry indeed.

The Tithe Administration of the Chapter of Amsoldingen

An especially precise insight into delegation relationships is provided in the few witness depositions in which at least one party needed to ask the witnesses systematic questions about the practices of officeholders in order to prove its position. The chapter of Amsoldingen found itself in such a situation in 1312 when it defended its alleged right to the tithe of the church of Hilterfingen against the claim of the cloister of Interlaken, or rather against the rector appointed by Interlaken.¹⁷ The settlement of the legal situation was complicated by the fact that the recently deceased rector, Heinrich von Wädenswil, had for many decades held the office of provost of the chapter of Amsoldingen in addition to that of rector, as had his predecessor. The Interlaken party took the view that the dead provost had had claim to the tithe only by reason of his additional post as rector, and the new successor named by Interlaken was therefore entitled to it. Against this, the chapter of Amsoldingen held that part of the tithe had accrued to Heinrich von Wädenswil not in his function as rector but rather as provost of the chapter, and that therefore the chapter could claim the tithe in the future. To substantiate this position, it was necessary to illuminate the mechanics of collecting the tithe in enough detail to highlight the difference between Heinrich's two positions.

An astoundingly high number of witnesses—at least twenty-seven of the total forty—who made statements on behalf of the chapter of Amsoldingen had themselves taken part in the collection of the tithe at the church of Hilterfingen in the preceding decades. In addition, numerous others who did not testify were mentioned by those who did testify. That so many people were involved is even more striking because the church of Hilterfingen was entitled to the tithes only from the village of the same name and the hamlet of Ringoltswil. At the head of the administration of these tithe rights, the statements agreed, were people who were described as *ministri* or *ministeriales* of the chapter. These terms refer to representatives of the regional service aristocracy, such as members of the families of Gobi, Lösch, and Rieden under the leadership of Heinrich Rieden, who is described in the charter as a *miles* and even as a *dominus* by one of the witnesses.¹⁸ Also belonging to this core group of lesser nobility were two illegitimate sons of the provost and a member of the Rieden family, whom the witnesses describe as the stepson (*filiaster*) of the provost. Although most of these people occasionally appeared in conflict with the provost, they presumably belonged to his personal retinue, which he brought with him to his church office as the scion of one of the most influential noble families in the region. These *ministeriales* had leased their share of the tithe of Hilterfingen for

decades.

Below them came a series of people who were bound less closely to the provost, apparently belonging to the higher class of peasants. Now and then they had leased the right to the tithe of a smaller area, or even only a portion of it, for a duration of one or a few years—perhaps not from the provost or the chapter itself, but rather as subleasers of the *ministeriales*.¹⁹ A now-prominent member of those leasing the tithe, R. Kriecho, remembered how his father had begun to lease small shares of the tithe right of the church of Hilterfingen in one year or another. At the beginning he had to join together with his two brothers and a neighbor. In the evenings, the four had then divided the earnings among themselves at home.²⁰ In addition to the tithe leasers, nine other witnesses stated that in one year or another, when they were hired for the task by the provost or another member of the chapter, they transported the tithe earnings from the church of Hilterfingen, where the collectors had initially assembled the tithe, back to Amsoldingen for delivery to the chapter. This involved mostly peasants from the area who earned some welcome supplementary income from it.²¹

The delegation of local lordship rights can only in the rarest cases be reconstructed so precisely as in Hilterfingen. But for many lordships there exists evidence that not only tithe rights²² but also many other lordly offices and competences that were not assigned as permanent hereditary tenures were carried out by rapidly changing personnel. Even though the litigating parties were presumably interested in recording details in witness deposition records from longstanding officeholders who accordingly had a wealth of experience, it is only the exceptional case that mentions people who had occupied an office for more than ten years.²³ In 1278 witnesses in one deposition named at least eight different men who had held the office of crop overseer in the small village of Les Chevalleyres for periods of one to three years, including one named Perronetus, who had held two one-year terms of office separated by ten years.²⁴ The circle of manorial officials and the people who owed these dues often overlapped. One witness from Les Chevalleyres was asked from whom he had collected dues as crop overseer; in addition to himself, he named another peasant who also appeared as a witness and stated that he had sometimes served as crop overseer.²⁵ In a witness deposition from 1446, the witnesses casually mentioned the names of no fewer than thirteen different people who held the office of the local representative (*nuncius*) of the bishop of Lausanne in the small village of Villars-Sainte-Croix over a short period.²⁶

The Circulation of Lordship Rights

The rotation of manorial officials who were responsible for small villages—sometimes including only a couple dozen households—suggests that a considerable part of the local male population participated personally in the

manorial organization at one time or another. Although with different competences, most of them had the opportunity now and then to “officiate” (*officiare*),²⁷ to use the typical word with which the witnesses describe this occasional service. Although the social background of the rural officeholders is seldom accessible, it would seem, on the one hand, that they belonged primarily to the upper classes of the village. Yet on the other hand, this seems not to have been a case of oligarchy, in the sense of the exclusive ruling classes that monopolized different town and village offices in the early modern period, which observed rules of succession defined by kin relationships. One can easily find rural manorial offices that were held by a father and his son or by two brothers, one after the other.²⁸ Such successions were, however, disrupted by people with other names. The term of office was often short but variable; furthermore, repeated terms of office sometimes occurred at very different intervals. This makes it unlikely on the whole that the rotation followed specific rules. Instead the irregularity indicates that the succession of officials was determined by momentary needs, personal relationships, and the availability of qualified candidates.

The circle of people who occasionally took part in the exercise of lordship responsibilities reached past the lowest holders of office and the shortterm leasers of shares in lordship rights. Even the small, sporadic leasers of tithe shares of the church of Hilterfingen hardly went from farmyard to farmyard themselves to fetch grain and fruit. In witness deposition statements the actual collection of manorial dues of all kinds is often described through the witnesses’ childhood memories of having to fetch and carry such dues as the son or the servant of the relevant official.²⁹ Thus in 1465 Cuonrat Würbler said that his father, a longtime substeward in the village of Mönchaltorf, sometimes sent him around to the local farmyards to collect rents or assemble the “shrove chickens” (*Fasnachtshühner*) that were owed as a manorial payment.³⁰ And in 1433 Savoyard commissioners examined an eighty-year-old widow who described how, as a young, newly married woman, she had gathered a fee currently under dispute in the form of wine must (newly pressed grapes) for the lords of Blonay because the relevant official, who was her *Gevatter* (that is, related to her through godparenthood), had requested it.³¹ At the lowest levels of delegation, the vicarious exercise of lordship rights was a matter of sharing responsibility among the family or the household, or was a part of the everyday exchange of reciprocal assistance among acquaintances.

Official activities could also be performed for a share in the accompanying earnings by people who were neither especially familiar with their direct employer nor aware of the legal basis of his assignment. In a witness deposition from 1413 about the tithe in Vernaz near Apples, two different witnesses affirmed that, years ago, they had collected sheaves on behalf of Ludovicus Rat without knowing on behalf of which lordship he had hired them.³² Perhaps they did not want to know. But for assistants at this

level, the person to whom the proceeds of the tithe ultimately went would in fact have been of secondary importance.³³ The less glamorous duties that accompanied lordship rights were even more often assigned as contract work. A witness deposition from 1396 investigated which lordship was responsible for judging claims to the skins of animals that had died along the road in different villages, which served as an indicator of the practice of higher judicial rights. Most witnesses who had taken animal skins to a lordly headquarters were not actual officeholders but rather had taken on this assignment as contract labor. Thus Borcardus Rocual saw to the dead horse of a German-speaking man who was passing through the area. He had already received eighteen pennies and some wine for skinning the animal. Then he brought the pelt to the local official, the *maior* of the lords of Oron, who instructed him to take it to the lord's castle. There he was served a memorable meal in the entrance hall. When Cuanetus de Perla brought to the castle the pelt of an ox that had broken its leg on the bridge, the lordship offered to sell it to him at a reduced price.³⁴

One could earn at least a little from lordly assignments at all levels of delegation. Whatever was materially involved in the transaction often escaped notice, but it could also accrue to anyone for whom a small cash gift, a tipple at the tavern, or a cowhide could make the effort worthwhile. Furthermore, the act of delegation was carried out not only in official and service relationships in the manorial sense, but also in support of innumerable informal relationships through which assistance was exchanged for material and nonmaterial benefits. The spectrum of practices with which the delegation of lordship rights could be integrated broadens even further when one includes the local economic functions that lordships exercised over their subordinates and which have received much recent attention: in addition to their dues, lordships bought the crop surpluses and commercial goods of their dependents, offered them consumer goods for sale, and granted them consumer or investment credit.³⁵ The delegation of lordly responsibilities could be integrated into all these types of transactions (which were in fact also structured according to manorial relationships, but went far beyond the fulfillment of the associated formal obligations) without any further effort. Thus, even the most insignificant lordship rights (considered from the point of view of their material earnings) gave the lords as well as the lower ranks of their officials opportunities to form or strengthen ties of cooperation.

Lordly Bonds?

The almost capillarylike structure of the delegation of lordly responsibilities should not lead one to conclude idealistically that most peasants—reaching down to the contract workers of subofficials—were fused into a closely aligned pact of interests with their lord. In any case, it is clear that the

advantages and earnings associated with the exercise of lordship rights were divided very unequally among different levels of delegation, and while they bound a few peasants more closely to the lordship, they excluded others. In addition, lordship rights were not passed along only within one lordly administrative structure. More often lordship delegations crossed formal manorial dependent relationships and contributed to the formation and realignment of groups that may be called either dynamic or unstable, depending on one's point of view.

Lordships appointed the dependents of other lords as officials in addition to their own. This can be verified with regard to the examples mentioned above, since the commissioners recorded the manorial affiliation of the witnesses as part of their personal information in the records. Thus in addition to its own dependents, the chapter of Amsoldingen appointed *servi* (that is, apparently, serfs) of the neighboring Habsburg lordship of Oberhofen as tithe collectors. Several crop overseers of the cloister of Haucrêt were not dependents of the cloister but rather of nobles in the vicinity.³⁶ Interestingly enough, the priory of Romainmôtier entrusted the office of *juge et gouverneur* in the village of Vaux-et-Chantegrue at least once to a dependent of one of the lords of Chalon, who disputed his local rights with the priory in a case from 1432.³⁷ One or the other of these officials from outside the lordship may have been connected by manorial land-leasing to the lordship that bestowed an office on him, but that was neither their only manorial affiliation nor the one that the commissioners considered preeminent.

In the fifteenth century at the latest, at least in the French-speaking west, it is possible to trace careers that were characterized by a succession of jobs in the service of changing lordships in different places. The witnesses who stated during their depositions in 1432 that they had once been *juge et gouverneur* of the village of Vaux-et-Chantegrue on behalf of the cloister of Romainmôtier had often subsequently held higher offices. While a few had ascended through the official hierarchy of the cloister, others had changed to the service of neighboring lordships and were now, for example, Burgundian castellans.³⁸ Such successions of offices are reminiscent of the careers of the holders of high offices in the administration of great territorial lords, although at a lower level of the hierarchy and in more narrow geographic bounds. The careers of men born into noble or knightly families during the same period were characterized by quickly changing jobs as castellans, judges, and stewards in different places, and such careers could include service to different lords.³⁹ Holders of village offices, too, were not simply those who had local roots and a tie to the lordship, but rather were part of an emerging profession with a "job market."

The delegation of lordship responsibilities intensified already existing dependent relationships and constantly created new ones, from the highest to the lowest levels; these relationships of cooperation reached across the

whole lordship structure between those of higher and lower social status. The extent of loyalty that accompanied such delegations in practice can scarcely be generalized. In cases where there was uncertainty about the legal holder of a set of lordship rights, many witnesses who had been entrusted with an office by a lordship began to vacillate prudently between the two claimants. This is visible in the inquiry of 1278 into whether the right of crop supervision in Les Chevalleyres fell to the cloister of Hautcrêt or to the noble lords of Palézieux. At least one of the witnesses, whom the nobles had designated as crop overseer and had called as a witness, undercut their claim. He said that he did not know whether the nobles had collected the dues rightfully or wrongfully but that it had sometimes been done by force.⁴⁰ Another group of men felt even less sense of obligation; in 1337 they collected some tithes for a few nobles in Sévaz which were also claimed by the bishop of Lausanne. Three of them confirmed that this tithe was actually due to the bishop. They were hoping, perhaps, that if the bishop won the case, they would continue to be entrusted with collecting the tithe, this time on behalf of the bishop. Where the claim of a lordship to a lordship right was imperiled, the loyalty and reciprocal relationships that had formed around the exercise of that right could be easily shaken.

In especially fraught situations, lordships often could not even rely on their regular officials but rather had to hire special envoys for specific tasks: “messengers” (*boten*) and *procuratores*. Other lordships tried to give their regular officials special incentives to protect their rights from competitors.⁴¹ The possibility of constructing wide-ranging cooperative networks through the delegation of lordship rights may well have been a motivation for the lords and their officials that has until now received too little attention, especially in explaining their efforts to defend lordship rights that were not very profitable through expensive court cases. Of course this always involved the defense of legal status. But even the smallest right had very practical meaning, above all as an instrument for structuring relationships. Delegating rights made it possible to compensate dependents of all social classes for aid already rendered and for future service, and to bind dependents to the rights’ holder, since they could take on the lordship’s legal competence and participate in the profits that arose from it.

Witness deposition records show that, for rural people, the experience of lordship was primarily mediated through personal relationships. In contrast to descriptions in official documents that recorded laws officially, this did not involve primarily the relationships between the peasants and their local lord. In most situations the person of the lord referred to an abstract holder of rights whose presence manifested itself in the activities of his officials and legitimated them. At the level of concrete practices, lordship manifested itself primarily in the form of a many-layered delegation of lordship rights to officials, and from the officials to a wider circle of people reaching beyond the lordship’s affiliation structure, who were entrusted from time to time

with particular tasks. The delegation of lordship responsibilities was one of many elements in the reciprocal relationships that ranged from wage work through clientage all the way to exchanges within peasant households. This point raises anew the question of the dynamics of conflict over lordship rights, which is the subject of the following section.

Disputing over Rights

Late medieval disputes over unwritten local laws seem to have played out along a few axes of conflict that were always structurally similar. In the documents generated by these conflicts, the parties and claimants who disputed the particular right or privilege were either two local lords or a lord and the totality of his local dependents. From the second half of the fourteenth century, communes (*Gemeinden*) appear increasingly as parties in legal cases, so that two additional constellations emerged: a lord opposing the group of his dependents represented by a commune, and one commune against another. These last two constellations can be understood as variations of the first two in a legal sense. Communes usually appeared as parties when they, like lords, claimed legal competence and prosecuted claims to dues. By contrast the people to whom the lordships delegated the exercise of their rights, the lordly officials—recruited from a relatively wide portion of the population—only rarely took part in legal disputes over lordship rights as official parties. This is surprising, and all the more so since the lordship representatives' own interests could be bound up with lordship rights and were not necessarily congruent with either those of the lordship or those of the peasants.

Were, for example, the tensions between officials and lords or between officials and peasants not serious enough to be brought to court? This is the impression related by a large part of German-speaking scholarship, and it is especially pronounced in Weistum research, which has been carrying on debates since the beginning of the twentieth century over the extent to which rural society was marked by solidarity or antagonism between the lord and his dependents while hardly ever considering officials in the discussion. Documents like Weistümer and charters exhibit systematic simplifications that become significant when compared to the witness depositions. The latter recount the conflicts from more perspectives and allow insights into the course of the conflict that preceded the court's efforts. The following section will attempt to set legal descriptive conventions alongside the logic of noncourtroom conflict procedures and thus gain a new understanding of the axes of conflict that legal documents place in the foreground.

In many witness depositions incidents that occurred in the lowest reaches of the lordship organization later appear as the immediate cause of the conflicts that ultimately involved the court in the case between two lordships. In the 1470s an unremarkable incident triggered a massive dispute over the rights of jurisdiction around Lake Thun: When Peter von Ringgenberg, a dependent of the lord of Spiez, rowed across Lake Thun, a wild boar happened to swim alongside his boat; he seized the opportunity to hunt and kill it. Happy about his catch, he forgot to pay a hunting fee to the city of Thun.⁴² When an official of the city of Thun wanted to fine the rower, the lord of Spiez—and with him a whole series of other lay and ecclesiastical holders of lordship in the region—perceived the action as an arrogant attempt by the city of Thun to extend its sole lordship over the entire lake. This triggered a far-reaching court procedure.

How a local dispute moved step by step up the hierarchy of lordship representatives and was finally submitted to the judgment of the territorial lordship is demonstrated by the witness deposition records from 1465 regarding the boundaries of jurisdiction between the two districts (*Landvogteien*) of Grüningen and Kyburg, which belonged to Zürich. One witness who had served the steward (*Vogt*) of Kyburg as a substeward (*Untervogt*) described the plight of a peasant who lived in the border area between the two jurisdictions. At the installation of a new steward in Kyburg, the peasant had sworn an oath of obedience to the latter. When the peasant was brought before the substeward of the rival steward in Grüningen, who also claimed the peasant as a dependent on the basis of his place of residence, the Grüningen substeward arrested the peasant for his previous oath. The daughter of the peasant appealed to the witness, in his office as the substeward of Kyburg. The substeward went to Zürich on foot to find his master, the steward of Kyburg, and explained the case to him. The steward ordered a legal scholar to accompany the substeward to his highest lord, the city council of Zürich, to bring a suit against the steward of Grüningen.⁴³

Such episodes are typical examples of lords who provided protection (*Schirm*) for their dependents and thereby became embroiled in disputes with other lords. In the tradition of Otto Brunner, part of the German-speaking research on rural society links protection with a wide-ranging paternalistic concern of the lord, who owed this to his dependents essentially in return for his dues and his claim to their obedience. The lordly obligation of protection therefore lies at the center of the controversy over the extent to which lordly relations in the late Middle Ages were reciprocal.⁴⁴ Weistümer in particular often mention the obligation of a lord to protect his dependents, but they seldom explain in detail what this implied. They simply assume throughout that protection included the wide-ranging shielding powers of the lord. In the occasional case where the protection is more precisely described, however, it includes the obligation of

the lord to protect his own dependents from being drawn into the jurisdiction of other lords, with the accompanying demands for dues and fines—exactly as depicted in the examples given here.⁴⁵ To uphold such a duty of protection required above all that the lords know their own lordship rights and protect their associated earnings.

Sometimes one sees a few peasants using a cunning strategy to call on one lord's duty of protection for practical reasons in order to escape from the grip of another. This is what, for example, the peasant Johannes Tellin tried to do, as he later admitted in a witness deposition of 1444, about the boundary of jurisdiction between the bishopric of Lausanne and the lordship of Cossonay. He once refused to let an official of the bishop confiscate his goods until he could persuade an official of the neighboring lordship of Cossonay to claim him as a dependent of his lordship and to bring a complaint against the claim of the bishop's official. At a higher level, however, it seems that the lordship of Cossonay did not consider Tellin's request important enough to challenge the bishopric of Lausanne. Tellin admitted that, in the end, he was required to pay the bishop's official a fine for his disobedience in addition to his confiscated goods. This outcome was cited in the witness deposition by Lausanne as a solid precedent establishing that the lords of Cossonay had not seriously claimed the disputed border area in the past.⁴⁶

In contrast, the appeal of a man named Peter de Grensa was more than convenient for the prior of Romainmôtier. Peter had committed a murder in the village of Bursins, where the noble lords of Mont and the priory were disputing their jurisdiction. Catherine of Savoy promised to ask the prior of Romainmôtier for mercy on his behalf, whereupon Peter extricated himself from the jurisdiction of the lords of Mont: he tied a rope around his neck and knocked on the cloister gate of Romainmôtier. He thus furnished the cloister with a memorable anecdote, which it used in a much later deposition in 1374 as proof of its jurisdiction rights.⁴⁷

The right of protection encouraged a relationship of solidarity between lords and peasants only insofar as the lordship was ready to assert that the rights it gave to a dependent were valid even against competing lords. When lords carried on conflicts that had broken out at the lowest levels of a power complex, they did not do so primarily out of solidarity with their dependents. As conflicts escalated to higher levels, their purposes changed according to the circumstances, so that a suit originally brought by local actors was overlaid with the interests of their superiors.

Appealing to Lordship Rights

The rights described in legal documents either as rights of the lord or peasants cannot be explained as simply the claims of actual lords or actual peasants. For the peasants, lordship rights that representatives from their

ranks had attested to functioned not least as sources of power in disputes among themselves, which could be closely linked to very different sets of interests at higher levels of the lordship organization. This is illustrated by the conflicts in Wald, a village in the uplands around Zürich that appears repeatedly in early to mid-fifteenth-century documents as a center of resistance to the city of Zürich's territorial claims.

The highest judicial rights in Wald belonged to the district (*Landvogtei*) of Grüningen, a holding the Habsburgs had granted as a fief to their followers until they pawned it to the city of Zürich in 1408. Some three years later, people from Wald figured prominently in a group that called on the Habsburgs' duty to protect them. The complaining parties asked the Habsburgs to retake control of the district and thereby protect them from the new Zürich lordship, which defied old legal customs.⁴⁸ In witness depositions regarding a dispute between the people of Grüningen and the Zürich lordship in the 1430s, witnesses from Wald figure as especially vehement proponents for restricting Zürich's jurisdiction.⁴⁹ Furthermore, the preamble of the Weistum of Wald from 1466 contains an unusually detailed historical overview of the lordship relations in the village that was intended to prove the latter's broad privileges and exemptions from dues against the city of Zürich as the territorial lord.⁵⁰ Such legal documents countered the claims of the lordship of Zürich with the communal rights of the village or with another lordship's obligation of protection. Thus they describe the conflicts along the same axes that are always encountered in legal documents (lordship versus peasants, and lordship versus lordship).

A very different picture is provided by a 1441 court petition brought by the people of Wald against their former Austrian lordship. It is constructed along more narrative lines and places the escalation of conflict in the foreground.⁵¹ This petition primarily concerns the schemes of a member of the prominent local Strehler family. One Strehler family member had convinced the steward of Grüningen, appointed by the city of Zürich, to accompany him to Zürich to request that the city council (as holders of the highest local jurisdiction) issue him a documented privilege to operate the sole tavern in the village. This act alienated the other villagers who until then had also served wine in Wald and who were now upset with the lordship of Zürich. But the villagers were even more upset with Strehler than they were with Zürich.

Reportedly, many people in the village began "somewhat avoiding" ("etwas zu scheuen") Strehler's tavern, which he took as an indication that he was "somewhat hated" ("etwas gehass were"). Strehler's increasing isolation in the village prompted him to ask the steward of Grüningen to make another trip to the Zürich city council. This time they both requested that Strehler be named the substeward (*Weibel*) in Wald. The Zürich council also granted this request.⁵² In exchange for the steward's advocacy, Strehler showed his gratitude by carefully ensuring that the people of Wald carried

out an old obligation (to which the petition admits) to fatten the oxen of their steward. Strehler further angered the village residents by the way he, as substeward, exercised such lordly privileges as fishing rights. It was said that he walked through the fields of his neighbors and trampled seeds, hay, and grass in order to fish from their plots of land, and no one dared to oppose him openly, not even when he threw the stones from his fields into theirs.⁵³

The court petition from Wald takes a perspective from within the village. The residents of Wald accused one of their own of obtaining the power to exercise lordship rights behind their backs. He did this to bolster his own position in the village power structure and to impede and debase others. On a more implicit level, the criticism resonated with a perception of the Zürich lordship as passive; this passivity allowed Strehler to exploit them, as did their steward, who by the fattening of the oxen became the beneficiary of Strehler's schemes. The primary cause of the complaint was the lordly behavior of Strehler, who, although he was a "peasant" like the petitioners, was accused of unfairness and negligence regarding agricultural administrative activities. Were these not the most classic motifs of contemporary criticisms of lordship?

In form, the petition approaches the conflicts neither as an internal village problem nor as a dispute between peasants and their lord. Instead the petitioners call on the duty of protection of their former Habsburg lords, who had transferred the district of Grüningen to Zürich by pawning it. The petitioners aimed to win support for their claims within the framework of a dispute between competing lords. Thus the villagers who were dissatisfied with Strehler framed the conflict in terms that did not manifest themselves on the local level.

Within the different constellations of conflict, appealing to the rights of one or the other lordship or to those of the peasants offered a legitimization strategy. At the time the petition was composed, describing the conflict in terms of the relationship between two competing lordships must have seemed the most promising approach. In the regional dispute over the Toggenburg inheritance usually described as the Old Zürich War, the Habsburgs belonged to a coalition against Zürich that was headed by the canton of Schwyz, whose military forces temporarily also occupied the area of Wald. Thus invoking the Habsburgs' duty of protection provided a way of challenging the city of Zürich—a possibility, however, that came to nothing at the beginning of the next year, due to a new rapprochement between Zürich and the Habsburgs.⁵⁴

In the end, every description of a conflict, including that of a historian, is structured according to abstractions. The abstract, symbolic language of late medieval legal records certainly conceals the social antagonisms for which the practice of rural lordship is known. Legal descriptive conventions focused on describing the rights of either lords or unified collectives of their

dependents. Despite this, lordship was practiced on an everyday basis by local actors who exercised rights as representatives and used them as personal resources. In addition, peasants could appeal to the rights of a lord when they sought to free themselves from the grip of the representatives of another lord. And village notables who competed for offices and privileges justified their own claims by appealing alternately to the rights of their lords or to those of their dependents. The way the formal opposing parties in a given conflict were finally described in a document had only a very indirect connection with the underlying social dynamic. It had much more to do with legal descriptive strategies. Accordingly, descriptions of local legal organization reflected complex cultural operations of translation and presentation that have been far too little studied.

Irregular Customs

Make the people and property in the area serve you, no matter whose they are. Leave no one out.... That which we are given by them now by courtesy, they'll also have to give next year. They must always do this and will never dare resist and will have to always do it. Whoever gives you a chicken today will give you two or three in a year with no ado.

—Advice of a wicked counselor to a lord who is constructing a new stronghold (Der Stricker, Märe “Die Gauhühner” [thirteenth century])⁵⁵

The concept of a legal custom—in Latin a *consuetudo*—was based on the assumption that a legal norm was valid essentially on the grounds that it reflected habitual practice. Laws were therefore deducible from patterns of contemporary activities. By implication this meant that every activity that was not unique had the potential to justify a legal custom. Such assumptions were supported by Fritz Kern, and after him many other historians and social anthropologists of the twentieth century, when they affirmed a paradox of the legal order in less literate societies: their legal customs must necessarily be perceived as old, but they must in fact always adapt to new circumstances and therefore must undergo parallel, scarcely discernible, developments. A strong opposition between past and present, between norm and practice, would seem to be alien to such a legal understanding that presupposed and attempted to enhance social consensus.⁵⁶

During the period under examination, especially during the early phases, the assumption that laws could be derived from habitual practices produced conflicting reactions. The poet Der Stricker caricatured such an understanding when he made the speech of his evil counselor amount to the idea that the weaker must yield to the claims of the stronger. The lord who

received a chicken as an expression of a friendly relationship (*in minne*) from his peasants—who were his dependents according to the law—could then in the following year claim that he was always due a chicken. Again, in early legal documents, customs were sometimes denied legal validity because they were “wicked customs” (“males consuetudines”).⁵⁷ This conceptual differentiation, which made it possible to find certain types of activity unlawful despite their prevalence in practice, also appeared in France up to the fifteenth century, for instance, during the official recording of legal customs sponsored by the king.⁵⁸ Nonetheless procedures for establishing laws in the area under study relied ever more heavily on the notion that laws could be sufficiently justified only on the basis of common practice—a position the learned commentary on the *Plaict Général* of Lausanne formulated explicitly.⁵⁹

The question of how legal regulations could be derived from customs is more complicated than contemporary criteria for the validity of legal customs lead one to believe. Foremost is the problem of the moral pitfall described by Der Stricker. The mere fact that the contents of legal customs could involve fierce controversy must warn us not to assume too mechanical a transformation of habits into accepted customs—regardless of the roles played by consensus or force. Every detail of the extant witness depositions about legal customs shows that the common practice in a given area did not generate a binding authority—though the courts nonetheless sought the solution precisely in these common practices. In what follows the relationship between legal customs and common practices will be investigated. An appropriate starting point is provided by the tensions between the dynamics of conflict resolution and the attempt to derive laws from practice.

Conflict Resolution Patterns

It is easy to undervalue the practical problems that stood in the way of reconstructing laws from activities in the past—long before modern moral philosophy, with its fundamental reflections on the maxim that an “ought” cannot be reliably derived from an “is.” On the one hand, customary legal arguments presupposed the stability of the social order. On the other hand, they were often used in legal disputes that lasted for years, during which time the parties experienced one another’s conflicting claims in practice. In a witness deposition conducted in 1413 for a conflict over tithes in the village of Vernaz between the priory of Romainmôtier and the noble lords of Mont, one witness said that in the thirty years he remembered, the right to local tithes had always been under debate. In one year, one of the parties would succeed in obtaining the tithes for themselves; in the next year, the other one would.⁶⁰ Witness depositions regarding jurisdiction rights repeatedly describe how one lordship began to condemn offenders and then had to

hand its prisoners over at the protest of another, or how when one lordship began to build a gallows, the representatives of another would tear it down. In disputes over water rights, witnesses described how one party built a dam that they then had to dismantle under pressure from the other.⁶¹ The longer such conflicts smoldered, the more conflicting practices occurred.

In the case of dues, which were probably the most common cause of conflict over lordship rights, it was particularly difficult to interpret practice as an expression of the legal situation. Many lordships tolerated peasants paying dues with considerable delay and in installments. There was a broad gray area between such delays in payment and actual refusal, which amounted to a nonrecognition of the lord's claim.⁶² Even witnesses who affirmed the right of a lordship to a particular due often gave examples of collections that were made by force instead of as regular, scheduled payments from peasants.⁶³ Moreover, those who harbored hidden motives found it easy to follow the example of the wicked counselor in *Der Stricker's Gäuhühner* and gradually establish their claims until their opponents demanded that they stop. To a great extent, these practices took place in an organizational system in which, on the one hand, few rules had a generally binding status, and on the other hand, the enforcement of the few accepted rules was largely a matter for the parties themselves.

It is difficult to assess the extent to which actors were also influenced by extralegal practices. There were good arguments against being too pedantic about custom. Otherwise even the smallest concession to an opposing party could threaten to impair the law itself. Many witness statements make it clear that such an attitude would have thwarted numerous attempts at extralegal settlement of conflicts. Regarding protracted conflicts between competing lords over dues, the witnesses sometimes reported that both lordships agreed to meet every year to divide the disputed dues—perhaps not least because both sides were in danger of going away from their dispute empty-handed.⁶⁴ In a 1389 dispute between the cloister of Amsoldingen and its dependents over the right to control the serving of wine, the witnesses called upon by the dependents admitted that the cloister had previously levied dues on the serving of wine in taverns. Yet whenever the lordship was lacking generosity in these matters, the peasants served their wine not in taverns, where lords could control them, but in their orchards, and thus eluded lordly control.⁶⁵ Thus in practice regulations often simply leveled off at the point where there was limited ability to enforce them.

In support of such regulations, something that was commonly perceived to be lawful could be quite explicitly neglected. In one witness deposition from the mid-fifteenth century over the boundary of the common pastures of Willisau, one witness reported an agreement that had once been established on a regular inspection to mark the boundaries of the common meadow. An old man named Honegger preceded the parties and accompanied them to a meadow, until a man named Ueli von Wangen

vociferously accused him of thus trying to exclude the meadow from common use. Honegger did not deny this, but rather said, "Never mind! You've also built an entrance to the common meadow with a gate in it!" His opponent, Ueli, did not deny that he had himself acquired a portion of the common meadow, although at first he tried to shift the blame for this to his tenants. To quiet the ever more vehement exchange of words, the two men in the end followed the recommendation of the oldest participant on the inspection of the boundaries and did not pursue the supposed irregularities of either of the two any further.⁶⁶

Such informal compromises were perfectly suited for settling conflicts outside of court. Precisely because of this, they are presumably vastly underrepresented in extant written records. They existed apart from written documentation, and even the memory of them ran counter to the aim that courts at the end of the Middle Ages pursued ever more rigorously: to seek the solution of conflicts in legal customs whose validity rested on regular practice.

Rescinding Previous Acts

The threat to legal customs which arises from the existence of contradictory incidents is explicitly addressed in a type of charter known as a "reversal." Reversals attest to the promises of their issuers not to use a current incident as a precedent for establishing legal customs at any point in the future. The production of a reversal indicates an attempt to make a given activity irrelevant with regard to a future delineation of legal customs, as though it had never happened. The first examples of such charters date from the early fourteenth century, and they became more numerous around 1340. The issuers of reversals included holders of lordship whose chancelleries were most familiar with learned law, above all the Savoyard territorial lordship and, beginning in the late fourteenth century, other medium-sized lordships, such as the priory of Romainmôtier, the counts of Gruyère, and the lords of Grandson and Cossonay.⁶⁷ They promised smaller lords that they would make no further claims to benefits they had obtained from their dependents.⁶⁸

From the middle of the fourteenth century, lordships issued increasingly numerous reversals in favor of their own dependents who, for example, had rendered extraordinary dues or had taken part in a military campaign beyond the limits of their duty.⁶⁹ The issuer acknowledged that the addressees had granted him this assistance as a gift or as bestowal of favor ("ex mera gratia et liberalitate, de gratia speciali et non ex debito"), and that he would not "derive any future claim" ("preiudicium generari") from it.⁷⁰ In early reversals, local legal customs sometimes are portrayed not as inviolably established regulations but as still subject to negotiation. Thus in 1329 Count Ludwig I of Savoy acknowledged that he, as the lord of the Pays

de Vaud, had received a one-time (“semel et non plus”) concession from the inhabitants of the village Les Clées according to which they had paid him a tax levied on every household. To get this concession Ludwig had been ready to pay a considerable price. In return (“in recompensationem”) he gave the people of Les Clées the use of the local meadows, which he would no longer loan out for interest, and granted Les Clées a charter like the one for his city of Moudon, thus making changes to the local legal order.⁷¹

By contrast, legal customs in most later reversals appear much more stable, not least because the reversal itself constituted the only compensation for the cooperation of the recipients. This placed the recipients in an ambivalent situation. On the one hand, the reversal they received could be used as a documented privilege in the future.⁷² In this function, reversals seem especially worthwhile for collective groups of peasants and smaller lords, and they are indeed primarily found in communal archives. On the other hand, the issuers may have found it more important that they had successfully persuaded the recipients to renounce—at least for the moment—a right to which they would have been entitled.

The rhetoric depicting the recipients of a reversal as generous often only poorly disguises the fact that the terms were arrived at under oppressive circumstances. In 1414 Count Amadeus of Savoy summoned his officials in Moudon to impel the local inhabitants to give a “voluntary” payment on the occasion of the emperor’s visit. The same day he issued a reversal for this payment. The count sent the two documents, presumably in a single package, to his officials. Thus when they levied the payment, they could use the promise of the reversal as an incentive.⁷³ A reversal, furthermore, did not protect the recipient from being pressed to renounce his right a second and third time. In 1387 the Savoyard territorial lordship issued a reversal concerning the fact that the inhabitants of the castellany of Yverdon had participated in the Savoyard wars in Wallis beyond their obligations. Indeed, four years later, the inhabitants of Yverdon granted their lordship the same favor once again—and were again given a reversal for it.⁷⁴ Apparently the Savoyards’ strategy was to claim exceptions to usual rights, and to reward these with cavalier promises not to demand anymore what they admittedly never had had a right to demand.

Similarly, in the area of legal jurisdiction, witness deposition statements from the mid-fourteenth century mention actual ceremonies through which official acts were not only declared to be legally irrelevant but even symbolically unmade.⁷⁵ Occasionally a lordship had to concede that it had infringed on the rights of another: that it had apprehended delinquents who fell under another’s jurisdiction. The delinquents themselves could no longer be handed over, because they had already been executed, sent into captivity, or set free, so the opposing party could be satisfied only when the prisoners were returned symbolically, in the form of effigies. Like the reversal charters, this practice can primarily be identified in French-speaking areas, though it

appears there in a standardized form that indicates a certain ritualization. When the erring lordship had already executed the prisoners in question, their corpses first had to be taken off the gallows. The effigies were always made in the same way, from burial shirts filled with straw, and nooses were tied around the effigies' necks. They were then handed over during an assembly, where representatives of both parties met. This could happen during the regular negotiations between representatives of neighboring lordships known as "the Marchia." The puppets could also be returned to the location where the delinquent was originally arrested, in order to cancel the illegal actions of the officials at the place where they began.⁷⁶

The ceremonies did not fail to fulfill their purpose. In witness statements they were often equated with the return of the prisoners themselves. For one witness from Oron, elements of the actual execution of the prisoner and the return of the puppet mingled so strongly in his memory that he reported seeing the corpse hanged from the gallows and then returned to the opposing party.⁷⁷ No witness doubted the efficacy of the annulment of an arrest symbolized by the return ceremony, however—not even those who dwelled on the details and technicalities and described a return ceremony that had happened *in figura* or *in effigie*,⁷⁸ or even remembered who had sewn the puppet and who had brought it to the assembly place.⁷⁹

Although they may remind us of popular culture, puppet-return ceremonies were less folklore than "lord-lore." The ceremonies drew numerous spectators,⁸⁰ but the real protagonists were the notable representatives of power complexes, such as the bishopric of Lausanne or the priory of Romainmôtier, who regularly used the services of learned jurists in their claims; these representatives sometimes also recorded the proceedings in charters.⁸¹ According to witness statements, at one puppet-return ceremony in Villars-Sainte-Croix during the first half of the fifteenth century, the bailiff of Lausanne appeared accompanied by his own proxy, a procurator of the bishop, and other high-ranking *ministeriales*; his counterpart, the castellan of Cossonay, brought a retinue of twelve men.⁸² This is even more remarkable when one considers that witness depositions very seldom mention incidents at which the highest officials were personally in attendance. The evidence for puppet-return ceremonies reaches back to the mid-fourteenth century, exactly the same time the reversal charters began to be produced in larger quantities. The return ceremonies appear, then, to have transformed a concept that existed in written form (in the reversal charters) into a ritualized act. While a written agreement could be repelled with words, to undo an act took, in the logic of custom, another act.

Although the concept of legal custom posits a particular closeness between legal norms and everyday activities, the derivation of legal customs from everyday life ran into great difficulties in practice. Memories of activities in the past often proved to be too situational, too ambivalent, and too opaque to be generalized into a legal custom as was desired. Aside from

legal procedures for the delineation of laws, an explicitly formulated concern to preserve legal customs was seldom expressed. Requests for reversal charters and rituals that relied on the same model provide one exception that attempted to void or symbolically rescind actions. But such actions were particularly ambiguous because they showed a discrepancy rather than a unity between practices and norms. There may have been customs that rested entirely on practice, particularly when they were not closely examined. But once the validity of a custom had to be demonstrated through a focused procedure, the courts probably operated with legal categories that barely resonated with the everyday experiences of the witnesses.

Unaccustomed Rights

In many disputes it was remarkably difficult to discern regular patterns that could be interpreted as legal customs. It would be too simplistic to conclude from this that in such areas the question of the correspondence of practice to norms was never confronted at all. There are constant indications in witness deposition statements that the witnesses evaluated activities according to other kinds of norms. This diversity of norms will be addressed in the section that follows. As we do so, we need to bear in mind that during deposition procedures, witnesses testified under specific circumstances that required them to relate numerous kinds of norms to the legal customs that were actually at stake. By examining such tensions we gain insights into the relationship between the concept of legal customs placed in the foreground by the court and the other organizing concepts people called on in extralegal affairs.

Diverse Norms

It was precisely the witnesses' legal understanding that often caused their depositions to arrive at disappointing results, for witnesses repeatedly expressed the notion that lordship practices and lordship rights were separated by a yawning gap. In depositions about jurisdiction rights, witnesses said they had observed how representatives of a given party had long received dues, deposits, and labor services; in those about water usage, they recounted how representatives managed their fields or their mills; in those about the usage rights of woods, they recalled how the parties chopped wood—but they wanted it noted in all these cases that they did not know whether these activities were lawful.⁸³ Some witnesses may have been using such statements to protect themselves from having to take a definite position in the conflict between two parties.⁸⁴

Along with those witnesses who said they did not know whether activities were lawful, there were some who unambiguously labeled ongoing

activities as unlawful. Thus witness depositions reported that a lordship had indeed levied dues, but “unjustly,” (“minus juste”) “against the law,” (“contra jure”) “by force,” (“per vim”) or in such a way that it “infringed” (“molestavit”) the rights of others, or that the peasants had capitulated to the lordship’s requests “due to force and not law” (“gewalts und keines rechts wegen”).⁸⁵ Even when witnesses did not say so, they still may have considered various activities unlawful because they defied older customs. It is obvious, however, that conformity to custom was not the only norm against which activities were measured.

In Savoyard depositions from the fifteenth century, the commissioners explicitly asked witnesses what a *consuetudo* was. Most answered that it was essentially a norm that rested on longstanding and uncontested practices.⁸⁶ The majority of those asked were notaries or holders of high Savoyard offices and benefices who were most familiar with the practice of the Savoyard courts, which had used an understanding of established *consuetudo* as a basis for their rulings in the Pays de Vaud for some time. Yet the witnesses’ answers proved to be astoundingly heterodox. Most evaded a substantive answer and contented themselves with describing a *consuetudo* as an unwritten law.⁸⁷ According to others, common practices alone were not sufficient to establish a *consuetudo*. They listed additional criteria such as reason, sometimes saying that a *consuetudo* was “a good practice for good reason observed for a long time” (“bonus usus et bona ratio diu observatis”) or “a reasonable practice” (“usus rationabilis”).⁸⁸ One notary from Moudon omitted the criterion of common practices from his definition entirely. As he put it, a *consuetudo* was an unwritten law by which the Pays de Vaud was governed and by which everyone was rendered his due. The second part of this statement is also part of a definition of justice in the *Digest* of canon law.⁸⁹ Such definitions leave room for other criteria to be applied in evaluating the conformity of a practice with the law, in addition to its conformity with custom.

In addition to the learned law, witnesses drew on comparisons with earlier court records or agreements reached through arbitration. Some witnesses even measured claims against the names of places and fields, which could be interpreted as expressions of binding legal relationships. Thus a witness in 1474 countered the city of Thun’s claim to supreme jurisdiction over all of Lake Thun by stating that, until recently, the lake had been called Lake Wendel, a name that gives no indication about its affiliation, and therefore neither the city of Thun nor any other lord had a right to it.⁹⁰

On a basic level peasant witnesses were also aware that contemporary law was marked by coexisting legal spheres and systems of rules that were different from one another. In 1303 representatives of the episcopal court in Constance produced a witness deposition in a dispute over forest-usage rights around Lake Brienz, a notably isolated area. In it many witnesses

stated that whoever had possession of a thing, whether a meadow, a horse, or a forest, for seven years acquired a right to it. They added, however, that this was only the case among laypeople and before lay courts, and they did not know whether this rule would hold up before an ecclesiastical court.⁹¹ Concerning the difference between lay and church law, the witnesses were aware that manorial relations belonged to their own legal sphere.⁹² In a witness deposition from 1471 regarding an inheritance dispute between nobles, peasant witnesses reported a rule that was followed by “small people,” or “peasants” (*minores, inferiores, or agricolae*), although they did not know whether it also applied to princes.⁹³ It does not appear that the disputing parties or the commissioners of the courts prompted such considerations through their questions. These considerations may have played a role in the court’s deliberations, but they did not further the project of collecting customs, on which the examination of witnesses was intent. It seems far more apparent that it was the witnesses themselves who considered information about the different legal spheres and systems of norms to be relevant.

Law and Love

The witnesses ascribed particular legitimacy and a high amount of worth to agreements arrived at voluntarily. Legal claims that were based on past actions were always vulnerable to the objection that they did not correspond to an established rule but rather had arisen from agreements relating to specific circumstances. Assertions of a regularized customary practice were countered over and over by lively stories that underscored the uniqueness of the participating actors and the specifics of a given situation. Thus witnesses who were defending the right of the lordship of Birmensdorf’s dependents to participate in the selection of manorial officials remembered the time when a new lord of the village was invested. Because he barely knew anyone in the area, the people of Birmensdorf “at his request” (“auf sein Bitten hin”) had rescinded their choice and “allowed” (“gegönnt”) the lord to name his associate, Hensli Joss, as the official for a transitional period. Similar arguments could be advanced in favor of the lordship. Around 1400, witnesses stated, in favor of the chapter of Amsoldingen, that the reason no tithe had been collected from the meadow of Villgi for some time was that an earlier representative of the chapter, Otto von Endlisberg, had come to an agreement with the current user of the meadow, Peter von Gauenstein, “with love” (“mit Liebe”) and had “gifted” (“schenkte”) him the tithe for several years.⁹⁴

Again and again peasants refuted lords’ claims to assistance and dues with the argument that the supposed right was derived from voluntary favors, for which diverse reasons were given. In 1429 witnesses refuted the lordship of Ringgenberg’s claim to labor service from their dependents. They

acknowledged, in fact, that in the past the inhabitants had done a great amount of work on the lord's castle. But these were not done "out of obligation" ("nicht durch Müssen") or according to an established right. Rather, the lords of Ringgenberg had a thriving agricultural enterprise of their own. When they needed help now and then at making hay or some other task, they asked for it in a friendly way. Most peasants were reluctant to refuse these requests, since the rewards included generous feasts and general gratitude. The peasants' petition states that there was even competition over who would be allowed to assist the lords. At the same time, witnesses from the town of Bülach affirmed that some people in their town now and then gave gifts to the local steward of their lordship "so that he would be more friendly with them."⁹⁵ Such statements also reflected a subliminal fear of the lordship's local representatives, which a witness from Vaux-et-Changegrue expressed in 1433. There had been times when the lord of Chalon's sergeants had constantly appeared in the village, terrorizing or duping certain inhabitants, "demanding a cheese or two from someone and one or two gulden or even larger coins from another, whatever they could give."⁹⁶

There are good reasons to doubt the reliability of such accounts. They are ominously reminiscent of the *topos* of Der Stricker's wicked lord, who exploited his dependents' acts of friendship in order to oppress them with new claims. Nonetheless, these reports are significant for two reasons. First, their contents criticize plausible practices; and second, even their topical form is indicative of the kind of representations such witness depositions requested. These two aspects will be examined more closely in the discussion that follows.

First, the content of these reports indicates possible courses of action—also known from other sources—by which lords consolidated and expanded their rights by making tentative claims whenever an opportunity arose. In certain cases, if the legal situation was contested and neither side was in a position to enforce its claim, ostensible generosity could conceal a compromise. Moreover, many of the reports concerning individual agreements with the lord's representatives, despite their apparent high value in everyday systems of norms, are rather beside the point for explaining legal systems of local lordship. Many things that were agreed on "by request" or "with love" apparently had less to do with formal lordship than with cooperation according to the rules of the market, wage work, or the obligations arising from kinship, friendship, and neighborhood. And seen from the perspective of these motivations—which could not even be addressed during an examination of legal customs—the practices could be anything but optional and voluntary.

Second, given their format, these reports were ideally suited for relating the extremely specific accounts of practice that witness depositions required. Inquiries could bring up individual agreements about specific legal customs

only insofar as they could be placed into one of two categories—they could be taken either as evidence for this or that legal custom or as an exception to it. Thus two things were already assumed: that in the relevant field of action there was an authentic legal custom, and that it described the only authoritative norm. Through their use of this narrative form, the witnesses made the events they described conform to such descriptive constraints. By describing the assistance given to the lords with expressions like “not through obligation,” “gifting,” or “a compromise for love’s sake,” the witnesses divorced them from their original context of relational obligations or agreements between individuals and placed them—even if only as an exception—against the background of a generally binding law.⁹⁷

This gave the impression that agreements of many different kinds had taken place in one way or another against the background of authoritative legal customs, even when on closer examination it seems ever more unlikely that generally applicable legal customs existed in the described region. Such adjustment of the description to the requirements of establishing the law was often done by the witnesses when they were constrained by the matter under debate and the series of questions determined by the parties, but in the end it could also be done by the scribes writing the court records. On the basis of such descriptive constraints, witness deposition records reduced a variety of normative orientations that played a central role in everyday activities not exactly to nothing but at least to an obscured view of their original significance.

When one reads between the lines of witness depositions, it is clear that assumptions about a law rooted in custom were in no way the only set of norms that were deployed in arguments about the everyday rural practice of lordship. High value was placed in many contexts on elements of learned and manorial law or on the decisions of local arbitration hearings, but above all on numerous agreements negotiated between individuals which had a contractual character in the broadest sense. When used in witness depositions whose methodology always assumed the preexistence of authoritative legal customs, activities that reflected these decidedly diverse forms of normative orientation could only be placed in categories that positioned them in relation to the legal custom that was being sought. It is thus the methodology of the investigation itself that created the superficial impression that the prevailing norms in rural society were rooted in habits, so that norms seemed to coincide with common practice and law with tradition.

* * *

Compared to modern constitutional law, the categories with which late medieval legal documents like *Weistümer* and charters described rural organization seem convincingly lifelike: personified lords and homogenous

groups of their peasants appear opposite one another as actors or parties to a conflict. The relationship between such actors could be described as a personal bond and ascribed to legal customs that had their origin and justification in patterns of activities that had been practiced in everyday life from time immemorial. According to such descriptions, witness depositions regarding lordship rights aimed increasingly at documenting the existence of legal customs by prompting witnesses to furnish examples of everyday activities of the past.

However, the activities described in the witness deposition transcripts convey an astounding series of incongruencies between official legal categories and everyday experiences of the day: the lords, to whom the peasants were supposed to have a personal relationship, hardly ever made an appearance in the actual conduct of the lordship organization. The disputed cases that were brought before the court in which two rival lords or a lord and his dependents appeared as antagonists in fact often had a conflict between heterogeneous interest groups at their heart. And the legal customs that were investigated before the court often reflected neither the practice nor the norms to which the witnesses were accustomed in everyday life, especially when they were contested. For contemporaries, the simple, personalized, and static picture of the lordship organization described an abstraction to which they adapted their descriptions of conflicts before the court, and which in no way formed the only imaginable view of legitimate order. This refutes an important argument for theories like that of Otto Brunner, according to which these legal categories form the only adequate point of departure for describing the rural social order.

In practice, lordship rights also served as resources. Their practical implementation was closely bound up with the reciprocal relationships of the household, friendship, clientage, or business, and also subject to the heterogeneous norms belonging to these relationships. This finding also contributes a new answer to the old question of how late medieval lordships could exercise control over the people with such rudimentary means of enforcement—without resorting to speculation about deep feelings of loyalty or about antagonism between lord and peasants that was suppressible only by force.

One of the paradoxes of the descriptive conventions of late medieval legal documents is that they left little space for describing the most important instigators for recording law in writing—namely, the ever more powerful territorial lordships and the ever more numerous lordly officials. The claims of territorial lords and officials also had to be rooted in the rights of a local lord or his dependents. Nonetheless, the legal descriptive categories accommodated the dynamism and complexity of actual lordship relations. The authority of the lordship could be divided among those who exercised it, but the law of the court assigned it to a unified abstract holder, such as personified lords or collectivities of peasants. This made it easier to

treat lordship rights as entities that one could bundle into a territorial power complex, delegate to changing personnel, and allow to circulate among a relatively wide circle of the population.

The processes of the courtly documentation of legal customs at the end of the late Middle Ages claimed merely to raise into consciousness an order that was already embedded in local activities. In practice, it was admittedly often the opposite: the exclusive orientation toward specific descriptive categories that were not necessarily visible in the everyday activities of the lordship organization made it possible to exclude the familiar personal interdependencies, groups of actors, and conceptions of norms from the resolution of conflicts in court. In most regards, the strengths of this form of description of law seem less appropriate for documenting an already existing order than for clearing the way for establishing new regulations.

CHAPTER 3

Maigret, the famous hero of twentieth-century French crime novels.³

Questions about the techniques used in court records concern a fundamental problem in the production of legal-political truth.⁴ Until now, scarcely anyone has asked how the narratives contained in court records functioned as evidence of legal customs and what developments caused witness deposition records to become such colorful and realistically detailed documents. The problem was first explored by a younger generation of scholars of heresy and its prosecution. In attempting to reconstruct the experience of the victims of legal prosecution, they uncovered how medieval chancelleries manipulated written records of witness examinations in order to legitimize their cases.⁵ The same kinds of manipulation were used in witness depositions about laws that were as yet unwritten. What follows, however, is primarily concerned with the implications of routine techniques for creating court records. The procedures for the production of court records not only substantially dictated how witnesses could make statements and what they could make them about; they also expressed assumptions about the character of the laws being investigated, as well as about their relationship to everyday life and to collective memory.

Although witness depositions were often recorded in close conjunction with oral questioning, as juristic documents they were always also the products of a culture of writing. This chapter takes that fact seriously. It seeks to tell a history of the genre of witness deposition records in the late Middle Ages and to demonstrate the development of their material and linguistic composition. In addition to the developments of the inquiry procedures already discussed in [Chapter 1](#), three other factors must be taken into account: first, techniques for producing and using court records; second, the way in which previous incidents were recalled, articulated, and deployed as evidence of law; and third, the collective memory that such statements drew on.

In the last few decades, research has discussed the ways in which medieval witnesses remembered as an aspect of a particular culture of memory. This research deserves a few remarks. It has sharpened our understanding of the fact that traditions transmitted orally were remarkably malleable, and they adapted themselves quickly and often subtly to changing circumstances. Thus medieval studies, too, adopted the position that memory was not merely a reconstructive but also a constructive process, even a creative one.⁶ Unfortunately, researchers interested in the culture of memory often treat witness deposition records as unmediated expressions of oral traditions which they believe can be approached with the methods of “oral history.” Yet even the fairly simple question of whether the recorded statements reflect the phrasing of the witnesses or that of the transcribers can seldom be precisely answered. More generally, the extent to which witness deposition statements were shaped by the circumstances and practicalities of their recording in writing has received far too little attention

until now. It is insufficient merely to state summary information about basic differences between media, such as the malleability of orality and the fixed nature of writing. Such general comparisons offer little insight into the reinterpretations intrinsic in producing concrete records, because they involved applying many diverse techniques for reproducing spoken words. A seemingly “oral” style is not inevitably a relic of the orality of the witnesses; it can also be achieved through specific techniques of textual editing, and it can serve compositional aims that have little to do with an unwritten culture.⁷

Focusing on the techniques of narrating and producing court records also provides new starting points for the study of collective memory. According to a fruitful distinction made by Jan Assmann, the collective memory of a society consists of a “communicative memory” that rests on shared everyday experiences and a “cultural memory” that contains central religious, moral, or even legal concepts of the social order.⁸ The editorial techniques used in witness deposition records indicate that, in the period around 1300, they were often produced with the purpose of identifying unwritten laws in one form or another as components of a societal consensus, essentially as cultural memory. Especially in such cases, we must examine carefully the extent to which different witness statements actually agree with one another and the ways in which they mixed elements of consensus with those of dissent, for often—and this is a main thesis of this chapter—the regulations’ roots in cultural memory were not simply verified in witness deposition records but largely generated by them in the first place. The narrative strategies by which this was achieved should also be of interest to historians.

The following argument approaches by several steps the question of how witness deposition records narrated the law. At the outset, developments in the material forms of the records will be investigated—that is, the most superficial level of their configuration: their formats, layouts, and graphical arrangement. These developments were closely linked with the implementation of new reading and evaluation techniques, but they also influenced the scope and boundaries for rendering the content of witness statements. The succeeding sections take up the narrative logic of such statements. These sections analyze how witnesses recalled memories of ritualized procedures and formulas as well as everyday experiences, and how they put them into words and related them to collective or at least widely circulated concepts. The last section of the chapter examines narratives about a distant, fabled past, for such narratives make it particularly clear how new requirements for the form and content of witness deposition statements were enforced, how the deployment of preexisting narrative material changed, and how new normative significance was ascribed to the past.

Documents, Scrolls, and Books

The material configuration, formats, and layouts of witness deposition records underwent fundamental changes between the thirteenth and the fifteenth century. The developments in examination procedures that have already been discussed contributed to these changes.⁹ But the material configuration of witness deposition records did not develop in precise synchronization with these changes; the court records changed not only because of new conditions for their production but also because of the new ways in which they were used. Among the most conspicuous is the change from recording the results of examinations in charters to recording them in scrolls around 1300, as well as the displacement of scrolls by volumes and books around 1400. These two changes form the core of this section, but we will also discuss gradual developments, identified by less marked breaks, in the graphic configuration and layout of the documents. The focus on such physical characteristics provides the most direct approach to the question of how these documents were usually handled, displayed, and commented on—the practices that the witness statements became part of once they were recorded.¹⁰

The Development of a Court Record Format

Until the middle of the thirteenth century, the results of witness examinations regarding unwritten law were recorded in charters (*Urkunden*). Aside from the names of the witnesses, all that was recorded was the final result of the inquiry, usually an explicit formulation of the regulation being investigated (Fig. 1).¹¹

That this took the form of an authoritative charter indicates that the normative statements agreed on by the mostly high-ranking witnesses had binding force.¹² This form of record was incompatible with the new procedure established around 1300, which focused more strongly on fact-finding. Thereafter the commissioners subjected witnesses to individual interrogations and had the statement of each witness recorded separately. Rather than direct questions about the wording of the rule being investigated, the witnesses had to answer numerous subquestions, or *articuli*, which served as evidence of the validity of a rule.

The statements derived from such procedures were recorded in examination transcripts and no longer integrated into legally binding charters. The court-proceeding charters now included at most a brief note that a witness deposition had been conducted, and they sometimes failed to mention this at all.¹³ As the practice developed, the court sometimes had the examination record sewn onto the charters (Fig. 2).¹⁴

Over time the witness deposition investigations became procedural documents that were clearly separate from the ruling, which was now left to

the court. Usually, witness deposition records were neither dated nor sealed, and they were not supplied with any other form of authenticating mark. Such records began to be issued in the form of notarial instruments only at the end of the fourteenth century, and at first only in the French-speaking parts of the region under study;¹⁵ it became common even later in German-speaking regions.¹⁶ In contrast to the older charters, the new court transcripts simply served as reference documents in the course of a case and had no further validity after its conclusion.

A new format was implemented for inquiry records: scrolls that were narrower but often several meters long, made from pieces of parchment¹⁷ (and from the middle of the fourteenth century, increasingly of paper) that were sewn together.¹⁸ This format was used for a whole range of contemporary written documents, predominantly those intended for oral speeches, because they could be unrolled a little at a time. These include early records of courtly poetry, the scripts for religious plays,¹⁹ and, above all, lists of lordly incomes and expenditures, from which officials read accounts of debts aloud. Documents about court proceedings that were conducted by commissioners regarding the conclusions of a witness deposition often mention that the court “heard the witness deposition” (“kundschaft angehört”),²⁰ so apparently such court documents were also read aloud.



Figure 2. Early example of a witness deposition recorded on a scroll. The depositions are separated from the charter containing the verdict. Perhaps as a remnant of the earlier practice of recording witness statements and rulings in a single document, the charter containing the ruling is sewn onto the scroll. Enquête Hautcrêt ACV IB 55 Nr. 44.

In addition the writers increasingly experimented with forms of visual arrangement that accommodated silent reading. The new procedures, in which the witnesses had to answer more subquestions in individual

interrogations, opened up fundamentally new possibilities for checking the statements for contradictions and for validity through comparison. Such techniques of reception were accommodated through layouts that visually separated individual statements from one another. The first records to list the statements of each witness separately took the form of a single, undifferentiated text block, similar to the earlier charters.²¹ In the decades around 1300, scribes began to experiment with methods for dividing the text; they sometimes began the statement of each witness on a new line, after an empty line, with the word “item,”²² or by numbering each individual account.²³ In this early phase, such systems of division often remained somewhat experimental. They were consistently implemented at the beginning of a court record and gradually were lost as the document continued.²⁴

In the middle of the fourteenth century, and above all in the Frenchspeaking west, the scribes began to divide the witness deposition records consistently into sections and to number both the witnesses and their respective answers to each question they were asked. This division made it possible to organize the court record according to two coordinates (witness/subquestion) in the pattern of a table, the simplest kind of database. The results of the inquiry therefore formed a system of small bits of information that could be related to one another in multiple ways. One of the oldest extant court records in which this organizing principle was rigorously implemented was generated in the court of the Savoyard castellan of Morges in 1374. Even when a witness did not have anything to say to one of the twenty-seven *articuli* posed to him, the scribe noted this fact in the appropriate place with a short note. Because of this meticulous recording technique, the statements of a single witness could take up considerable space and fill several sheets of parchment (Fig. 3).²⁵

Arranging court records in this way required rigid discipline on the parts of the examiner and the scribe who produced them. The examiner had to follow the interrogation closely and could not allow the witness to digress into free-ranging statements, since this would muddle the ordered series of questions. In the court records of Bursin in 1374, the witnesses repeatedly gave information before the appropriate *articuli* were presented. The scribe then had to refer back to these earlier statements in the relevant places in the record.²⁶ Somewhat later, at the beginning of the fifteenth century, the chancelleries of the German-speaking east developed techniques that placed fewer requirements on the internal organization of the records, but instead divided information very deliberately among different documents: witnesses' answers were often recorded on separate sheets for each question.²⁷

Records constructed in this way were apparently no longer read aloud before the adjudicating panel and, indeed, would scarcely have been intelligible when recited orally. Instead they reflect the needs of readers who wanted to compare wordings systematically, substantiate facts, or call into

question discrepancies between the statements of several witnesses. It has already been established for the development of procedural forms that this desire increasingly rested on the assumption that unwritten law could be known, verified, or refuted in substantially similar ways as facts. This conception changed not only the procedure of inquiry but also, with a little delay, the forms in which the inquiries were received by the court. They shifted the emphasis from hearing to seeing, from reading aloud to silent reading, during which the records were systematically searched for agreements and contradictions.

Two Sample Appraisals

The techniques for evaluating records that arose around 1300 led, in subsequent decades, to further developments that can be seen in two unusual, not to say unique, sets of surviving sources. For two court cases from the fourteenth century, we have not only the witness deposition records in favor of one party but also the written responses delivered by the opposing party. The first example was produced around 1312, during a dispute over the church of Hilterfingen's right of patronage, which both the cloister of Interlaken and the canon chapter of Amsoldingen claimed for themselves. The second example concerns a conflict in 1396 between the bishop of Lausanne and the lords of Oron over the boundary between their jurisdictions.²⁸ In neither case can the entire course of the legal dispute process be reconstructed; indeed, it is never clear whether in the end a ruling accepted by the parties was even produced. Nonetheless, the role witness statements played in the arguments of the disputing parties is unusually well documented for both cases.

deposition procedures that modeled themselves on the method of Roman-canonical civil cases, none of these *articuli* directly asks for an actual phrasing of the right of patronage claimed by Interlaken. Instead the witnesses were asked to furnish evidence that Interlaken was in fact entitled to the right it claimed. The answers to the *articuli*, for example, were supposed to show that Interlaken had acquired its rights over the church from the noble lord of Eschenbach, along with rights to land and jurisdiction in the vicinity; that it had previously exercised the right of patronage in practice; and that forty years earlier it had successfully defended itself in an arbitration court against the claims of the chapter of Amsoldingen. Individual articles then dealt with, among other things, the name of the arbitration judge, the witness examination that had taken place decades before, and details regarding how the verdict was proclaimed. The records of an examination structured in this way were naturally quite extensive; they were recorded on a piece of parchment several meters long in small, dense handwriting.²⁹

How did the author of the statement on behalf of the opposing party, the chapter of Amsoldingen, respond to this scroll? He was not particularly impressed by the amount of data. He remarked dismissively that it was often better to say a few pertinent things than to inundate one's listeners with unnecessary information. He also criticized the large number of examined witnesses, especially since there were numerous unfree men and—most unusually—several women included among them. The author asked the court to consider that the opposing party would have done better to call fewer but more trustworthy persons to give testimony. For this, he cited a mishmash of passages from canon law according to which older witnesses were preferred over younger ones, those of higher estate were preferred over those of lower, male witnesses were preferred over female ones, and free witnesses were preferred over those who were unfree.³⁰

Neither statement of the two disputing parties responded to the statements of individual witnesses in the inquiry records of the other party. Both criticized the witnesses for the opposing party in general terms and doubted that their reports were valid indicators of the legal situation. Thus the extravagant descriptions of the Eschenbach nobles' practice of local lordship rights were countered with the statement that these concerned the lay lordship (the *dominium*) of the region but did not prove any right of patronage over the church, for such a right could also exist independent of lay lordship.³¹ The Interlakeners accused the opposition witnesses of relying too much on hearsay instead of reporting what they themselves had seen. This preference for statements about *visum*, about things the witnesses themselves had seen, also characterized the Roman-canonical civil court process.³² The statements generally justified this stance with a quotation from Horace's *Ars Poetica*, a treatise on the theory of theater: "Less vividly is the mind stirred by what finds entrance through the ears than by what is

brought before the trusty eyes.”³³

In contrast, neither party took the opportunity to express doubt about the reliability of the opposition’s statements. This is despite the fact that there were apparent contradictions among the witnesses’ recorded statements, and that several said the events under investigation lay so far in the past that they had passed beyond the ability of men to remember.³⁴ In the trial, however, this hardly came into consideration, for the arguments revolved mainly around the questions of whether the witnesses were reliable, honorable people, and whether the incidents they related were relevant to the main question of the case.

An entirely different pattern is evident in the evaluation of a witness deposition produced some three generations later, in 1396, when the bishop of Lausanne and the noble lords of Oron quarreled over the jurisdictional boundaries in the vicinity of the stream of Grenet. In this case deposition records for witnesses in favor of both parties are extant, but only one of the response statements: namely, the reply of the lords of Oron’s representative (he calls himself a procurator), written in French, to the witness depositions for the bishop. Unlike the statement’s author in the case of the Hilterfingen church, the procurator responded to each individual statement from the bishop’s fifteen witnesses. He raised objections *ad personam* against nearly all of them, challenging their acceptability as witnesses; he accused most of them of being dependents of the bishop and therefore partial. The procurator dismissed one witness on the grounds that he had been excommunicated for twenty years and generally had a bad reputation. As at Hilterfingen, the procurator also objected generally to all reports that the witnesses knew only through hearsay.³⁵

The procurator did not particularly dispute the relevance of the remaining statements to the legal question. Instead, he cast their factuality into doubt in rather pedantic ways, subjecting certain points to a harsh critique. For example, a witness named Johanet Burgator tried to support the bishop’s stance: he reported that he had seen, from a meadow near Hautcrêt, how officials from Oron had removed thieves—whom they had unjustly arrested in the bishop’s jurisdictional district—from the gallows under pressure from the bishop’s representatives.³⁶ The procurator objected to this statement on the grounds that the witness could not possibly have observed this event, because one could not see from Hautcrêt all the way to the place of execution in Oron, “even if he had all the eyes in the world at his command.”³⁷

At one point the Lausanne party was nearly doomed because several witnesses described the same incident but gave different dates for it.³⁸ The witness Johanet de Symon, too, should have been disqualified for a dating error. He described an official act as having occurred twenty-two years earlier, when Peronet Marsens was still castellan of the fortress of Oron. The procurator refuted this statement with the fact that Marsens had stepped

down from his post as castellan thirty years earlier, and had died twenty-four years before the current inquiry.³⁹ If these dates were accurate, the procurator could know them so precisely only because, as an administrative specialist, he had access to written sources and was able to “trump” the vaguer forms of reckoning time used by peasant witnesses.⁴⁰ In none of these cases did the procurator think it necessary to discuss whether these events had actually taken place, despite their contradictory dating. His strategy was apparently to undercut the reliability of as many witness statements as possible. In this way he sought to undermine the foundation of the opposing party’s argument—the assertion that their stance was rooted in the secure knowledge and practice of the people.

Since both of these evaluations of witness depositions are unique survivals, it is not easy to tell how representative of common practice they were. But in conjunction with the change in recording techniques, they give the impression that the methods for systematic comparison and the discovery of contradictions in alleged details that the new document layouts facilitated were increasingly used. This development was linked with a double shift in focus from hearing to seeing. First, the ability to access a report in written form became instrumental to evaluating court records. To summarize the relevance of witness deposition records, as the author of the opposition statement in the case of the church of Hilterfingen did, it had sufficed to have the records read aloud and to note the most important arguments. The procurator of Oron, on the other hand, who scrupulously examined the statements for contradictions down to the last detail, clearly had the actual records before his eyes. His approach relied entirely on the implicit understanding, also increasingly important in the inquiry procedure itself, that the validity of a rule was dependent on the factuality of reports about its observance.

Second, the new evaluation method required that witness statements, too, be oriented toward the visual. The opposition statement of 1312 already criticized the witnesses for the opposition for relying too strongly on hearsay and too little on what they themselves had seen. This stance appears in the procurator’s opposition statement in 1396 in a more radical form, where knowledge that rested on hearsay was repudiated in general. Witness statements that explicitly cited legal norms were therefore unavoidably suspect. Norms could only be heard—or at best read—but never seen. Indeed, in court records created from around 1360 onward, the witnesses increasingly reported self-witnessed, often notably dramatic examples of the practice of law. The fact that statements about the law assumed ever more prevalently the form of reports of lived experiences cannot be directly linked to the intentional choices of prominent actors. This change has much more generally to do with the internal logic of developments in witness deposition procedures and the methods of evaluating witness deposition records.

In the years around 1400, the format of the records changed again. The previously adopted scroll format was not particularly well suited for comparing the wording of entire written statements with one another, as the procurator of Oron did in 1396. The witness deposition records on which he commented were probably among the earliest to be recorded in volumes. In the course of the fifteenth century, records of witness depositions appeared in this format ever more frequently.⁴¹ When it was necessary to preserve extensive witness depositions in writing, as was the case for the counts of Savoy's courts, which examined witnesses from all of the Pays de Vaud, the volumes grew into thick tomes, sometimes containing hundreds of pages.⁴² In this way, witness deposition records converged with objects typically found on the desk in a quiet study: they became books.

The volume or book format made it easy to find particular passages and to build arguments that relied on citing several statements that were listed in different places. Witness deposition records were now provided with page numbers. Readers marked passages that seemed important to them in the volumes' margins; they underlined them and made marginal notations or marks, especially in the form of hands, whose pointing index fingers indicated a particular phrase.⁴³ One new type of finding aid, which normally could be used only in volumes and books, consisted of long fingerwide strips of paper that were laid between the pages. On these, the scribes included cursory keywords, often in distorted syntax, such as "this witness saw the gifting and loaning to Lord Wilhelm" ("hec [sic] testis vidit donationem et foundationem domino Vuillelmi") or "an extraordinary and prudent man" ("egregie et circumspecte vir").⁴⁴ Such strips testify to a silent interpretation of the text that also enabled quick quotations of the right sentence at the right moment of the court proceeding.

From the fifteenth century, there are also increasing traces of work practices that included searching extensive records for particular information. One example is provided by a 1446 witness deposition record about the jurisdictional boundaries near the village of Villars-Sainte-Croix. It contains numerous anecdotes in which the disputed course of the borders is discussed. In the margins a reader has marked—always with the same mark—more than thirty passages that mention a brook called Pontisel.⁴⁵ Such reading practices aimed at processing large amounts of data. They enabled analytical operations focused on the serial nature of the records and measured the frequency with which certain elements recurred.

In records of the fifteenth century, new organizational forms developed to accommodate the evaluation of extensive series of statements. This development was linked with the spread of a new understanding of unwritten law that has already been discussed in the examination of new procedures: the law being investigated was increasingly understood as a

body of knowledge shared by a whole regional population, which involved numerous witnesses from extensive geographic areas.⁴⁶ This practice produced records whose layouts not only separated the individual witnesses and their answers to individual *articuli* graphically from one another but also introduced a third level of categorization with the grouping of witnesses by locale.

When the central Savoyard courts collected witness depositions from elites who lived across the extensive Pays de Vaud, they divided their records according to the territory's administrative divisions and organized the witnesses according to the capitals of the Savoyard castellanies, thus producing "chapters" titled "Moudon," "Vevey," "Morges," "Aubonne," "Nyon," and "Coppet."⁴⁷ Even records from inquiries by small lordships in French- and German-speaking areas that only covered small territories were divided into individual chapters dedicated to one place. Thus the records of an investigation of lordship rights in the village of K  lliken in Aargau, in which only witnesses from neighboring villages were examined, were divided into sections carrying the names of these villages: "Muhen," "K  lliken," "Gr  nichen," "Sch  ftland," and "Niederentfelden."

Admittedly, the itinerary of the commissioners, who traveled from one place to another during the inquiry, could entail that the witnesses appear in the records according to their places of residence. This organization was also highlighted graphically, however, which further indicates a conscious effort to relate witness depositions to topographic entities.

Grouping witnesses according to place often accompanied a strong standardization of the records of their statements. A standardized reference system that enabled the aggregation of records was already beginning to see use around 1300. The basic feature was that the answers of only one or a few witnesses at the beginning of the record were fully transcribed. For subsequent witnesses, scribes noted only which of the already recorded statements their answers agreed with. At most, the scribes included the specific points on which the statement of a witness departed from that of the fully transcribed exemplar.⁴⁸ This system was now subordinated to the topographic organization of the records. This development enabled a reading that was less focused on the statements of individual witnesses than on the congruities and variations in the statements of geographically defined groups of witnesses.

The scribes of the city of Z  rich experimented with especially radical techniques. They laid out witness deposition records in the form of extensive documents, at the top of which they recorded a single statement not ascribed to any specific witness. The rest of the document contained only a list, divided according to place of residence, of all the witnesses who had agreed with this statement (Fig. 4).⁴⁹

Such recording techniques, concerned with the bare approval of the statement, marked the culmination of a progressive restriction of inquiries

that had begun around 1300, with the introduction of a detailed grid of articles.

Die da herre id zu der heilichkeith und an der rechte gen. Geringen

Das ersten gunt die selben gewichte. Vnus gen. Geringen in der lute
von dem vns mit der heilichkeith (Item von Geringen mit der
mutter den vnschuld). Den selben Geringen vns mit der heilichkeith
und der geling hin vns mit der vnschuld. Als der sime heilichkeith
schindler (Item von Geringe). Dassel heral bis gen. Geringen. (Item von
Geringen). Von dem Geringen den so mehr vns in der lute
als der lute. (Item von dem alten Geringen bis gen. Geringen). In der
Turin. Von dem alten Geringen bis Gering. Vns mit der heilichkeith
Item von dem alten Geringen vns mit der heilichkeith. Von dem
Geringen bis gen. Geringen in der lute. (Item von Geringen bis vns mit der
heilichkeith in der lute)

Und hermit schand die nachgeschriben Geringe. In nachher
gehe. Und darmit offentlich zu Gering und den heiligen Gering. Das Gering
heintich der alt anwer
Johanne Gering
Johanne schindler
Eidolff Gering
heintich Gering
und Eidolff Gering

alle von Geringen

Item Johanne Gering
Eidolff Gering
Gering Gering
und heintich Gering

von Geringen

Item Eidolff Gering
Eidolff Gering der alt
Gering Gering
Eidolff Gering
Eidolff Gering

alle von Geringen

Item Eidolff Gering
Johanne Gering
Gering Gering

von Geringen

Item der alt anwer
heintich Gering

von Geringen

Figure 4. Section of a scroll recording witness depositions. A transcription of a single statement appears at the top, followed by a list of witnesses who

agreed to this statement, with angled braces grouping the witnesses according to their villages. Kundschaft Grüningen (ca. 1330) STAZH A124/1 Nr. 15.

The standardization of witness statement records accommodated evaluation methods that must be described as “quantitative.” It emphasized the large numbers of assenting witnesses and their organization by spatial categories: that is, their arrangement as evidence of the consistent distribution of legal knowledge among the whole people of a geographic region. This happened in the very period during which officials first attempted to survey and outline “the population” systematically in household and tax lists.⁵⁰ In this context, the activity of exact comparative reading increasingly resembled an ultimately objective and precise technique—that of counting.

In the course of the late Middle Ages, the physical characteristics of witness deposition records changed—from charters to scrolls to volumes or books—and ever more elaborate techniques of textual organization appeared. The scroll format was suited above all for reading the results of inquiries aloud before the court in the traditional way, from beginning to end. In contrast, volumes, books, and elaborate layouts were conducive to the precise study of the text and, in the end, quantitative evaluation. The material configuration and the forms of usage therefore changed according to the pulse of interpretive processes, at the center of which were, first, hearing, then seeing, and finally counting. Hearing allowed one to determine laws whose validity rested on agreement. When one began to assume that law was not a matter of negotiation but rather could be reliably known through external evidence, silent reading and exact comparisons came to the fore. The emphasis on counting arose because law also needed to accord with widely distributed knowledge.

The Logics of Narration

Recent research on societies without writing assumes that the oral transmission of legal knowledge and the perpetuation of social consensus over its authority rested on continually repeated announcements or proclamations of the regulations.⁵¹ In fact, most witness deposition statements mention both formal and informal ways of transmitting legal knowledge orally. These can very broadly be divided into two types: First, there are descriptions of strongly ritualized legal procedures like arbitration courts (*Schiedsgerichte*) or swearing-in ceremonies at which regulations were either enacted or declared in ceremonial formulas. Second, especially in later witness deposition records, there are increasing accounts of people having discussions about valid law in everyday situations.

At present, there is extensive agreement that neither form of oral transmission was able to stabilize received knowledge in the same way as writing. Rather, orally transmitted knowledge constantly adapted to new circumstances. Nonetheless, medieval evidence is rarely plentiful enough for us to discern concretely how such adaptations occurred. Though there are generally several extant formulations of a given unwritten received legal regulation, they usually were created over a period of many years. For this reason it cannot be decided whether variants are to be explained primarily as evidence of a consensus gradually being changed or as evidence that a consensus had never existed, because opinions had at any point in time been too different. In contrast, witness deposition records make it possible to establish how much recollections that were articulated at precisely the same time and under similar circumstances differ from one another. In what follows, such differences shall be examined—not, of course, to test the truthfulness of the statements, but to trace changes in the narrative techniques contained in the records and especially in the references to collective memory.

The records under examination here underwent a great deal of work before reaching their final forms. Unfortunately, very little is known about the procedure for the first written recording of oral witness deposition statements. Especially at the earliest stages, this often involved translation from the vernacular into Latin. Possibly the commissioners followed a procedure that is better known for ecclesiastical inquisitorial procedures. A first draft of the record—with running translation back into the vernacular—was read back to the witness for confirmation, and then a clean copy was made.⁵² The extant records mainly consist of such painstakingly edited clean copies and hardly ever include the notes made during the inquiry itself. One witness deposition produced in the fifteenth century for a court of the city of Zürich is among the very few for which a draft remains in addition to the clean copy.⁵³ When one compares the two documents, it is clear how extensively the witness deposition records were edited. While the draft cites people only with their first names, surnames and titles were added in the clean copy. A few statements included in the draft were omitted entirely from the clean copy—perhaps because they had too little direct relevance to the legal question at hand. Above all, sentence fragments in the draft were made into complete sentences in the clean copy. This, paradoxically, makes the clean copy seem much closer to a lively oral statement than the draft, which was in fact closer to the oral statement in the work process of the scribes.

Witness deposition records are substantially edited texts. Though it is impossible to know in detail which expressions the witness and which the scribe contributed, it is still worthwhile to look into the structural elements and narrative logic of at least a few typical sorts of statements. The section that follows discusses reports about legal procedures and the legal formulas

that were pronounced in them, then moves on to references to statements about valid law that occurred in everyday contexts.

Contradictory Statements

In 1303, the noble lords of Ringgenberg defended their right to use the forest on the southeastern shore of Lake Brienz against the claims of the cloister of Interlaken, and had a witness deposition conducted for this purpose. Among other things, the witnesses who were examined were asked to provide information about an arbitration court that had allegedly decided the same question in favor of the lords of Ringgenberg some forty years earlier, in 1260. Four of the witnesses examined went into great detail about this arbitration court in their answers. Considered separately, each statement seems to give precise information about the course of the procedure. But when compared, they show their unreliability, at least in describing details. The statements contradicted one another concerning the court date, the personnel involved, and the type of procedure followed by the court. Regarding the procedure, one witness described how four men from different villages of the Ringgenberg lordship swore an oath that the usage rights belonged to their lord. Two others described a form of oath helping that is documented on various occasions in the thirteenth century: first, seven witnesses swore to the right of the Ringgenberg lords, then seven others took an oath with raised hands—as was the practice—that the first seven had sworn correctly.⁵⁴ Both witnesses who described this last type of procedure enumerated the witnesses who had taken the first oath, but gave entirely different names. Both quoted in German (“*ut vulgariter dicitur*”) the formula of oath common to such procedures but gave two different formulas.⁵⁵ Though the different descriptions of the same incident cannot be made to agree, at least they all attempted to describe the details of the arbitration court procedure that would establish its validity: it was required to follow certain inherited protocols—such as oaths that particular people had to speak with particular gestures and according to an authenticated formula. But the two accounts exhibit little agreement about exactly which procedures, which people, and which oath formulas were involved.

The discrepancies in statements about the arbitration hearing procedure make especially clear a phenomenon that more subtly marks other statements in witness depositions and, to some extent, memory in general. According to the “schema model” used by researchers in experimental psychology, memories fade so much over time that details of past experiences fall out of memory. But this does not mean that the event is recalled vaguely. Often details that are perceived as typical for the remembered situation according to a currently active schema or script are substituted in the place of actual details.⁵⁶ When witnesses made statements about legal forms in the framework of a procedure that they knew served as

a way of defining laws, they tended, knowingly or unknowingly, to populate their memories with details they saw as constitutive of the legally valid execution of such an act. Thus they perhaps relied on more recent experiences or on contemporary normative conceptions with differing details more than they did on the experience in question. Along with descriptive elements, the answers of the witnesses give information about elements that can in a way be seen as normative, in the sense that they describe what the witnesses perceived as usual, characteristic, or even legally required. In this way, the reports of legal procedures in the past already approximated norms that resembled the legal customs being investigated.

Recollections of an Oath

A witness deposition from the fifteenth century provides unique insights into how widely disparate conceptions mixed with individual memories in witness statements. In 1421 the urban commune of Payerne and the lordship over the town, the Cluniac priory of the same name, quarreled over the boundaries of their individual legal competences. They brought this dispute before the court of the duke of Savoy.⁵⁷ The Savoyard court carried out a witness deposition procedure during which thirty-six witnesses provided information about, among other things, the oath that the city councilors had to swear to the cloister on taking office. One of the examined witnesses said that he did not know the wording of the oath;⁵⁸ nine of them merely stated that it was said in a way authenticated by custom (“more solito,” “more consueto”).⁵⁹ In contrast, twenty-six of the witness statements repeated the content of the oath. No two of these wordings agreed with each other. Even their length varied, between eight and forty words.⁶⁰ For only three witnesses did the oath include the promise to keep the business of the city council a secret.⁶¹ And only a few mentioned the promise not to have another lordship before their own, a phrasing that was possibly an echo of the third biblical commandment.⁶²

Yet most of the formulations, taken on their own, seem to repeat a binding, established oath formula. Practically all the formulations contain word pairs and stipulations that recall the formulaic speech of legal documents. A few formal elements recur in almost all the witness statements. For example, they opposed things that should be furthered (*procurare*) with those that should be avoided (*evitare*). In one of the briefest formulations, the promise was “to be faithful, to further the rights of the lord and the city as much as possible, and to avoid the opposite” (“jurant ... de se habendo fideliter, iura domini et ville possethenus procurando et contrarium evitando”).⁶³ However, the two verbs are applied to different objects in each statement. Thus, “to further” could occur not only with *iura*⁶⁴ but with each of the following substantives alone or in combination with others: benefit

(*proficuum*),⁶⁵ honor (*honor*),⁶⁶ advantage (*commodum*),⁶⁷ freedoms (*libertates*), privileges and customs (*franchisias et consuetudines*),⁶⁸ and usages (*utilitas*);⁶⁹ furthermore, all these “goods” could accrue either to the lord alone or to the lord and the city.⁷⁰ The mixing of such expressions in a formula is one of at least two basic patterns of sequencing. Many formulations are divided into three clauses with verbs (as in the example above: “to be ... to further ... and to avoid”).⁷¹ The longer versions furthermore allow three verbs to follow one another immediately as qualifications (e.g., “to further, to make, and to serve”).⁷² The differences in content are based on variations within a relatively unified structure, which can also be demonstrated in other witness depositions regarding the formulation of oaths and regulations.⁷³

Not a single witness said that the wording of the oath formula could vary. To the contrary, they all attempted to make their version of the wording conform to that of a typical, binding oath. And in doing so, they appealed throughout to the extensive consensuses or—in psychological terminology—collective schemata that structured the memories of most witnesses. These admittedly dealt more with the spoken form than with the precise legal contents of oath formulae. The modalities of witnesses’ memories can broadly be compared with the “oral formulaic theory” developed in literary studies.⁷⁴ According to this theory, compositions that were passed down orally for a long time were formed of established small compositional elements that could be combined with one another according to a limited number of rules. This is what produces homologous phrasings that can vary not only with each teller but with each telling by the same person. At the same time, such variants followed patterns that were unified enough that contemporary hearers perceived them as identical to and according with common usage (“more solito”).

In the case of oath formulas, the mix of stability and flexibility in oral tradition enabled political statements. The details of word choice made it possible to place emphasis on the things that were relevant in a concrete situation of oath helping: for example, during disputes over dues, officials could push into the foreground the *utilitas* of the lordship, while citizens could do the same for the *libertates* of their city; during intracity party conflicts, city council members could emphasize the confidentiality of council business—and their opponents could likewise gloss over these promises.

The Savoyard court archive houses a notarially registered document that summarizes in only one and a half pages the results of witness deposition records from Payerne which occupy more than one hundred printed pages in the modern edition. Among other things, it records the oath formula that was ostensibly “discovered” in the course of the inquiry. Yet even this version does not agree exactly with any of the witness statements but nevertheless follows the familiar formal pattern: it is divided by three verbs,

of which two indicate what is to be furthered as opposed to the one denoting what is to be avoided.⁷⁵ Among the many variants stated by the witnesses, the notary chose those in which the advantage (*commodum*) of the lordship was to be furthered. With the third predicate, “and whose rights and commands are to be obeyed” (“iuraque eiusdem et prohibitiones observare”), this version pushes the city council’s obedience to the lordship into the foreground. The “official” version also introduces a verb, “to obey” (*observare*),⁷⁶ that only a single witness used, and a noun, “prohibitions” (*prohibitiones*), that not a single witness used. The variability of the descriptions of the proper oath made it possible for territorial lordships to place a decided emphasis on their own interests in their wording of the oath without departing from the broad formal elements suggested by the authoritative, received phrasing.

Fictive Rituals

Situations in which memories were elicited to define a legal regulation amplified the tendency toward schematizing that was already a part of the very nature of memory. Witness deposition records apparently tended to underscore the formulaic nature of statements or the regularity and ritual character of incidents. This is especially apparent when witnesses described ritualized legal actions that no one had seen occur. In 1432 the priory of Romainmôtier conducted a witness deposition to defend its right to the highest legal authority in the village of Vaux-et-Chantegrue against the claims of the noble lords of Chalon. The witnesses’ answers brought a serious problem to light: not a single one of those examined could remember a criminal offense that was serious enough to give either of the two lordships sufficient cause to exercise the highest legal authority by imposing execution or other corporal punishment.⁷⁷

Yet many witnesses described a ritual that they had heard was originally intended for the punishment of serious offenses. The criminal was to be convicted by the judge of the priory and then handed over totally naked (“tout nu”) to the lords of Chalon’s officials at the mill of Vaux so that the sentence could be carried out.⁷⁸ This act corresponds with a legal regulation that other witnesses repeated in abstract form: the priory was entitled to give sentences in high court cases and to confiscate all goods of the delinquents, while the lords of Chalon were responsible for transporting the delinquents from the village to their place of execution and for carrying out the sentence. For this they could claim no material compensation—not even the clothes the condemned man wore on his body.⁷⁹ In this case the practice the witnesses describe is not drawn from real memories of an actual incident; rather it is an imaginary construct that expressed a legal regulation, not in the form of an explicitly stated law but in the more vivid form of a ritual that was “visible,” at least in the imagination.

The conventions for composing legally binding documents could have themselves required that individuals describe ritualized ceremonial acts that had not actually occurred in the way they were described. On this point, the witness deposition statement of a notary from the Pays de Vaud is revealing. He was asked about the form in which binding promises had to be made according to local legal customs. He answered that such promises were sometimes ritually sworn on the Gospel but sometimes simply on the hand of a notary. Independent of whether a promise was actually made through the more ceremonial or the less formal of the two procedures, the notaries always certified in the written instruments they issued that the promise had been sworn on the Gospel.⁸⁰

Such findings sow doubts regarding received ideas about how recourse to established rituals was a general characteristic of nonwriting societies. There is such an affinity between norms that were recorded in writing and established rituals that it is particularly easy to translate one into the other so that the written recording of norms provided strong incentives to describe previous acts as established rituals and previous statements as established formulas. The need to visualize abstract legal regulations in the form of physical practices incited scribes to depict practices that did not follow particularly regulated forms as rituals, and in extreme cases even to describe rituals that were fictional, quasi-literary creations of an administrative scribal culture. Thus regulations that were to be recorded for the first time in this way were legitimized by the fact that they corresponded to undisputed longstanding patterns of acting and speaking.

Citing Everyday Life

Even the first witness deposition records in which the individual witnesses' statements were recorded separately, created at the end of the thirteenth century, contain numerous quotations of direct speech. In Latin records quotations were sometimes left in German or Romance vernaculars; often they included exchanges of speech and counter-speech as well as direct address and interjections: "Don't even speak of that!" ("non me parle de czo!"), or "Bissinger, you have committed a crime!" ("Bissinger, du hast gefrevelt!").⁸¹ Such exchanges provide even the present-day reader with the feeling that witness deposition records provide unusually lively and authentic insights into an everyday life that is long past. Although such quotations do suggest the singularity of the reports, they also primarily indicate standardization. They made it possible for descriptions from established legal acts and legal pronouncements, as well as anecdotes from everyday life, to serve as concrete examples of norms.

Between 1300 and the end of the fifteenth century, the framing narratives in which such quotations were embedded changed: the center of gravity shifted gradually from ceremonial to very mundane contexts. In

records from the thirteenth and early fourteenth centuries, one finds primarily quotations of statements that occurred during legally binding procedures for the intentional delineation or mediation of legal regulations in manorial and arbitration courts,⁸² in the context of formal official acts, and frequently also in the form of statements that an officeholder made on his deathbed “taking the words along on his last journey.”⁸³

At the end of the Middle Ages, the framing narratives and the narrative elements that surrounded such quotations gained greater importance. The alleged legal facts needed to be verified in narratives about everyday life. This is especially clear in witness depositions regarding the courses of boundaries, which often included details about places where border stones could be found. Until the middle of the fourteenth century, witnesses drily described the position of the markers scattered across the countryside that delineated the lordships’ ownership of different areas.⁸⁴ In contrast, descriptions of landmarks from the fifteenth century are mostly clothed in short narratives.⁸⁵ In a witness deposition from 1446 about the jurisdictional boundaries in Villars-Sainte-Croix, twelve different witnesses made statements about a threecornered iron pole marked with three coats of arms that stood where the three lordships of Echallens, Cossonay, and Lausanne met with one another. None of the witnesses restricted himself to describing the position of the pole. Most described either how it had once been plunged into the earth or how they had been led to the place so that they could see it.⁸⁶ One witness even described how someone could not find the pole on one occasion—an episode that had no value at all without a quotation of that person’s accompanying statement. The witness stated that he heard a man named Girard Crestelliet scolding, “Cursed be the one who took a pole from this place, for it was not more than three years ago that it was still here and marked the boundaries of the three lordships!”⁸⁷

Beginning with court records from the fifteenth century, there are increasing reports of statements that occurred in quite unspectacular circumstances; these stressed that the knowledge of the cited regulation amounted to an essential condition for coping with everyday life. In the same witness deposition from 1446, one witness recalled a carter who had cudgeled someone in the district of Lausanne. When the carter somewhat later wanted to take his cart across a stream, which allegedly marked the boundary of Lausanne’s court territory, the people called to him warningly, “If you go over to Lausanne, you will remain there, for you have committed an offense in the jurisdiction of the bishop!” The carter then turned his cart around and returned home.⁸⁸ Such accounts no longer expressed the regulation being declared but rather the implicit acknowledgment of it by the people.

The witness statement of 1478 excerpted at the beginning of this chapter, which concerned a hunted stag and a beloved dog, also seems to have little to do with the disputed question. The case involved a dispute over the

boundaries of jurisdiction of the provost of Interlaken on Lake Thun and the accompanying right to the head (or, in its place, a large piece of meat) of any wild animal caught within these boundaries. In his statement, one witness described a stag hunt in all its details, at the end of which the hunters debated whether they should give the provost of Interlaken the head of the stag they had caught or a large piece of meat instead, so that they could preserve the leather. One of them said, "What would we want with so much leather?" and quickly cut off the head.⁸⁹ Such richly embellished reports were included in the records not because witnesses and scribes in the fifteenth century increasingly lost their appreciation for essentials but rather because they reflected new concepts of what was essential for defining the law. The details lent an air of authenticity to this report about following a regulation that was so self-evident in the conversation of the hunters that one does not dispute *whether* they followed it but only *how* they followed it: did they give up the meat or the head?

A comparison of the statements of different witnesses indicates that there was little stability and continuity in the unwritten transmission of precise legal content. Nonetheless, the statements that were included in witness deposition records were conducive to interpretation by the courts, and not only because the statements allowed the court wide scope for delineating future authoritative regulations. The witness deposition procedures themselves and the activities associated with them—first the recall of incidents, then their articulation, and finally their recording in writing—mediated between incidents and legal norms. Now incidents and expressions from the past that could no longer be exactly reconstructed were overlaid with conceptions of how these would characteristically or ideally have run their course. Thus emerged strongly typed descriptions that, in addition to a descriptive dimension, also had a normative one, in the broadest sense, in a form that could easily be translated into abstract legal regulations and could be offered as legitimation of them by showing that they had already been authoritative before their establishment in the courts.

While early witness deposition records cited primarily ceremonial acts of purposeful agreements and the transmission of laws, records of the later fourteenth and fifteenth centuries increasingly included accounts of everyday verbal exchanges that often concerned not so much the disputed regulation itself but rather its undisputed observance. As unwritten law was increasingly perceived as the product of everyday practices of the people, witness statements needed to provide a picture of everyday life, where the rules to be proven were self-evidently observed. Descriptions of the specific circumstances in which something was said encompassed an ever broader scope and became ever more diverse. Just as statements in early witness depositions downplayed the divide between regulation and practice—in that they described stylized ceremonial legal acts or legal formulas—the statements of later inquiries suggest a picture of a typical, everyday world in

which people had always lived according to the disputed regulations and had always had them in their consciousness.

The Changing Function of the “Distant Past”

Occasionally, accounts of incidents that occurred so long ago that they cannot have been personally experienced by even the oldest witnesses appear in the witness deposition records. Such reports, which sometimes take on the traits of fairytales, hold a particular fascination for the modern reader. In fact they were what originally sparked historical research interest in witness depositions. More recent works increasingly characterize such reports as expressions of an *imaginaire* about the past that is to some extent seen as specifically peasant but also simply as a component of the general medieval culture of memory.⁹⁰

In any case, it is reductive to consider the narratives contained in witness deposition records to be reflexive expressions of a mentality. Doubtless much of the narrative material had already circulated in one form or another among the people before the inquiry was carried out. Yet the inclusion of this material in statements about valid law attests to the function that it could fill in the context of a procedure for defining the law.

This section discusses how reports about the distant past functioned as justifications for unwritten laws and how they changed along with developments in inquiry procedures and the narrative style of witness deposition statements. Two different types of such reports will be compared: first, an older type, already discernable around 1300, which depicts how a particular law was created; and second, a type of narration that began to emerge from the fifteenth century, which demonstrated less the origins of a law in very distant times than its practice since those times.

The Origins of Laws

Records of witness deposition procedures of the thirteenth century, in which the witnesses still explicitly formulated the disputed laws, contain scarcely any examples of their actual observance in the past. It is debatable whether contemporaries even regarded the regulations that they described as ancient. It seems just as plausible that establishing the age of current laws was not an urgent question to them. Not until around 1300 did witness depositions ask about actual activities that showed the validity of the laws and give stronger incentives to include occasional stories about older incidents in the statements, in addition to narratives about more recent ones. Among the prominent characteristics of witness deposition statements about far-distant incidents is the fact that they often made do without any explicit chronological organizing scheme at all. Incidents that the witnesses dated

with tolerable precision were seldom more than sixty years past. What had happened long ago already seemed to be a component of an “old time” that was only vaguely specified, and which could be assigned fairytale-like characteristics.⁹¹

In this context there was an intensified need to note that very old people were among the witnesses; they were sometimes even explicitly asked about their age. The scribes were often not satisfied with the information of the witnesses, many of whom said that they did not know their own age or gave answers like that of a resident of the mountain village of Brienz who, in a witness deposition from 1303, maintained that he had already lived twice fifty years, yet would not admit to being one hundred.⁹² In such cases, the scribes sometimes adopted indirect techniques for establishing age, such as the fascinating typology of graying beards in a deposition from 1303. There it was noted, “Burchard ... has a gray beard, but does not know his age.” Of others it says, “He is beginning to go gray in the beard,” “is graying,” “is partially” or “entirely gray.” If this evidence was not available, there were other ways of telling, as in the case of Konrad Wisser, who quavered so much in speaking that he had to be older than seventy.⁹³

Until the fifteenth century the witnesses invoked events in this distant past almost solely to explain how a lordship was entitled to a right that it claimed. For this older type of narrative, the first examples are from the records of a witness deposition from around 1312, in the dispute already mentioned between the cloister of Interlaken and the chapter of Amsoldingen over the rights to the patronage of the church at Hilterfingen. Here we find three different reports about long bygone incidents which tried to show how one of the litigating parties acquired the disputed right. The first of these stories, told by two peasant witnesses, is particularly tidy: Long ago, there were three brothers in Oberhofen who collectively inherited the entire lordship of Oberhofen, which also included the village of Hilterfingen and its church. The brothers agreed to divide their inheritance among themselves. The first founded the cloister of Interlaken with his share. The second donated his portion to the chapter of Amsoldingen. The third received the castle of Oberhofen itself and the surrounding lands, to which the church of Hilterfingen belonged. No one knew the name of this lord anymore, for it all “happened a very long time ago.”⁹⁴ But the third brother must have been an ancestor of Walter von Eschenbach, who donated the church to the cloister of Interlaken.

A second report was furnished by two canons of the cloister of Interlaken: according to them, the church of Hilterfingen stood on land that had once belonged to the lord Werner von Oberhofen. He left his entire estate to his daughter Ita. Ita produced a son, Berchtold, with Walter von Schnabelburg; but the boy’s full name, rather than Berchtold von Schnabelburg, was Berchtold von Eschenbach, owing to another inheritance that he likewise received. Berchtold’s son Walter, whom a few witnesses had

known personally, finally donated the church to the cloister of Interlaken.⁹⁵ A third, very different history of the land was told by the witnesses in favor of the chapter of Amsoldingen. According to them, a man named Libo had donated his lands and all lordship rights in Hilterfingen to the chapter. One witness described Libo more precisely as a free knight, but not a single one gave any further information about the time he lived, his background, or his genealogy. On the other hand, many mentioned that Libo's soul was prayed for every Sunday in the church.⁹⁶

The stories exhibit many similarities. In addition to the vague chronological information, the narrative minimalism is noticeable. All the reports contain only a few stereotypically repeated details, which the individual witnesses embellished only sparingly, if at all. This may be partially due to the fact that the memory of the incidents had largely faded, since they happened so far in the past that they could be known only through hearsay. What is more significant, however, is that at least a few details were essential because they were directly responsible for the present legal situation.

The story of the three brothers in Oberhofen traced not only the two disputing parties, the cloister of Interlaken and the chapter of Amsoldingen, but also the object of dispute between them, the lordship of the church at Hilterfingen, back to a single common inheritance, and it incorporated not only the dispute but also the obscure underlying organization into the supposedly simple context of a nuclear family. Even more meager was the story of Libo, which emphasized the opposing claim of the chapter of Amsoldingen by not even associating the donor with a known noble family. He was therefore in recognizable relations only with the chapter and no other holder of lordship in the region. Only the story told by the Interlaken monks was so complex as to give concrete names. Yet precisely this fact could have narrowed its argumentative value. Ideally, the story of the cloister's claim to the patronage rights over the church of Hilterfingen should have been validated by a dynastic, noble inheritance. But the succession in this case implied—because of the above-mentioned names—female succession and name changes, which required further explanation.⁹⁷ In all the cases, the argumentation that accompanies the stories seems almost circular. The stories generally consist of elements that can be deduced only from the same alleged current relationships that they were supposed to verify.

Such stories perhaps circulated even before the inquiry in the form of oral narratives. Nonetheless, they should not be understood as components of an autochthonous folk culture; instead, they can be attributed to the lordly production of tradition. The witnesses knew the story of Libo primarily from the *Amsoldingen memoria* of donors and thus from the intentional liturgical promotion of a historical representation by an ecclesiastical holder of lordship. The story of the three brothers could

possibly be linked with vague memories of the contents of charters, perhaps the founding charter (of disputed authenticity) of the cloister of Interlaken from 1137, which names a lord of Oberhofen as its founder but does not name his brothers.⁹⁸ Thus the report could derive from oral accounts that were intertwined with written documents, but whose contents were embellished in the course of retelling and partially refashioned into a more fairytale-like form. Although the witnesses drew on very widespread narrative materials, it was probably not collective memory that linked this material with the legal situations then under debate. It seems more likely that such linkages arose from the immediate need for legitimation, especially since they were brought up by only one or a few witnesses and even took contradictory forms.

From the time around 1300, laws in witness deposition statements were increasingly justified through incidents from a past that was so distant that none of the examined witnesses had experienced the incidents themselves. The earliest of these included a type of relatively crude narrative that explained how a specific legal situation had arisen through an agreement, an inheritance, a donation, or a sale. Although such reports sometimes displayed fairytale-like characteristics and could scarcely stand up to a rigorous examination of their truthfulness, such as those the courts increasingly performed, they displayed a power of suggestion that should not be underestimated. The reports appealed to known narrative material, but linked it in a new way with a current legal dispute and thus gave the impression of supplying answers rooted in unknown traditions to questions pertaining to the present debate.

Primal Customs

In the fifteenth century a new type of narrative regarding the distant past emerged in witness deposition statements, especially in German-speaking areas, alongside the older type. It was intended to document less a particular moment for the appearance of a legal situation than primeval patterns for observing regulations. This type was linked with a new narrative style and new ways of linking narrative subjects with collective memory. These innovations in narrative strategies will be outlined in what follows and placed into the broader context of the use of the distant past in witness deposition records. The “dim past” acquired a new significance for the legitimation of the legal and social order at the end of the Middle Ages, which can be shown in a variety of examples from both German- and French-speaking regions.

To illustrate the type of narratives about the distant past that arose in the fifteenth century, two examples reproduced in modern translation will be given in detail. The first story is well known through Guy Marchal’s article, which contributed decisively to modern research interest in witness

deposition records. The story is found in a witness deposition record that the city of Luzern produced when it defended its right to build a bridge outside the city at Emmenbrücke. Its opponent was a nobleman who maintained a ferry in Emmenbrücke, collected fares from the passengers, and perceived the bridge-building project as an encroachment on this source of income. The city of Luzern justified its right by claiming that there had been a bridge decades ago at the same place which had since fallen down. Jenni im Holtz, a witness who appeared in favor of Luzern, supported the city's argument with the following story, which he had heard someone relate at dinner.⁹⁹

"In the old days," there was a man from Schwyz going up and down on the old bridge. Someone called Meisterli came along and said to him, "What are you looking for here? Have you lost something?" He answered, "I dreamed for a long time that I would find a pot full of money on the Emmenbrücke bridge. But I never knew where Emmenbrücke was, until someone in Luzern told me it is here." Then Meisterli answered him, "Hey, what kind of fool are you, to bother with such a thing? I also dreamed that I should go to Schwyz and go into the house of a man"—and he named the man who was standing on the bridge searching—"and look under the hearthstone and find there a pot full of pennies. Yet I never went there!" So the man hurried home to Schwyz and looked behind his hearthstone as he had been told and found there a pot full of pennies.

A second example was produced between 1419 and the middle of the fifteenth century. It appears in a witness deposition in a dispute between the city of Bern and the local lord, Thomas von Falkenstein, regarding who held the highest judicial authority over the village of Köllikén. The Bernese asked the witnesses for examples that their steward had exercised supreme judicial authority over this area in his courts in Lenzburg or Muhen, as opposed to Falkenstein's having done so in his local manorial court in Köllikén. Although the inquiry records noted the witnesses' statements for the most part in strongly standardized form, the scribes recorded the following unique answer in great detail. A man named Rüdi Zeglinger, from the town of Aarburg, near Köllikén, stated that¹⁰⁰

he heard from his ancestors how someone came into the tavern in Köllikén and said to the landlady, "Give me something to eat." Finally, he told the hostess, "Make me poached eggs!" The landlady said to her husband, "He wants poached eggs, but I don't know how to make them." He answered, "Take eggs and whisk them," and he took straw and chopped it up and they took it and put it in a pan and baked it. When the landlady gave it to him [the guest], he became very angry. The landlord put a timber in the door handle and called for the neighbors. When they came, the landlord went in and said, "Why are

you raging? Here come a lot of people, and if you love yourself, then get out of here!" The guest said, "Look, all I did was steal a horse, and it's still standing by the fence." That is how the landlord apprehended him, for neither he nor anyone else had known about it. And he [the guest] was caught in the village of K lliken and hanged in Muhen.

The style of both narratives from the fifteenth century depart from the older type discussed earlier. While the earlier type recounted the origin of a disputed law in a spare style, the newer stories about the practice of the law are sprinkled with ornamentation. Numerous details included in the witness statements were not only without consequence for the legal question then under dispute but also not even essential to the narrative itself: the man who was looking for a pot of money on the bridge at Emmenbr cke had asked someone the way there in Luzern. And the landlady in K lliken not only was unable to prepare poached eggs herself but even relied on the help of her husband to cut up straw. An economical recording style could easily do without such information. Against the background of the common use of quotations in older witness depositions, the inclusion of direct speech like "Hey, what kind of fool are you?" or "Give me something to eat!" is particularly striking, since such quotes are without any significance for documenting the observance of the disputed regulation, much less for encapsulating a legal relationship or its justification.

A certain amount of literary shaping was responsible for the clarity and entertainment value of the episodes. Good oral narration by the witnesses alone would not have been enough to appear authentic and spontaneous in written, officially recorded form. It also required scribes who were ready and able skillfully to translate embellishments and exchanges of direct and indirect speech into written form, which they perhaps learned from the example of comic literature of the period. Ultimately, stories narrated in this way claimed to contain incidents that, if not exactly mundane, nonetheless had to do with everyday life and therefore were full of habitual activities and ways of speaking. The diffusion of such narrative patterns during the fifteenth century can be further established through reports of events the witnesses themselves had experienced. Evoking the everyday nature of the distant past, however, made different claims on narrative techniques.

It seems even more doubtful than in the case of reports about the origins of laws that stories about a rule's observance in practice contained narrative material that was commonly associated with the disputed legal situation as a component of collective memory. While the stories about a law's origins were repeated by multiple (though not by many) witnesses, those concerning its observance are each found only in the statement of a single witness. Nonetheless, this does not mean that the narrators had invented their stories. There were forerunners even for these stories. Guy Marchal has identified the report from Emmenbr cke, using the international motif

typology of folktales by Stith Thompson, as tale type N531.15, about the double dream of the treasure on the bridge. This story was told in an astoundingly consistent form, from the tenth to the twentieth century, about bridges in the British Isles, on the Baltic Sea, throughout the European continent, in Persian-Arabic areas, and as far distant as Japan.¹⁰¹ There is nothing to preclude the possibility that such a story was known to some fifteenth-century listeners in the vicinity of Luzern.

According to the same typology, the story from Kölliken falls under motif N275, about the clumsy criminal who betrays himself when he falsely believes that he has been discovered. The most well-known version of this motif occurs in the fairytale “Dr. Know-All” from the collection of the Brothers Grimm; a medieval version is contained in the French *Cent Nouvelles Nouvelles*. Admittedly, one can find no parallel for the way the Kölliken story integrates this motif with that of bad hospitality, although most versions contain somewhat dubious heroes like the tavern-keeper of Kölliken, who discovers the truth out of pure coincidence.¹⁰² Relative to the regulations actually under debate, both stories relate a considerable excess of information, which indicates that the tellers had originally learned them in very different contexts. The witnesses had thus quite certainly borrowed from a supply of popular oral narratives.

In the more recent examples, referring to such narrative material tellingly served to exemplify the observance of a law under conditions that seemed archaic due to the stories’ fairytale-like form. In contrast, the reports used in the older type of narrative seemed to explain how a particular legal situation had arisen. Through this shift from illustrating the origin of laws to illustrating the stability of laws, the narratives about the distant past adapted themselves to the new understanding of unwritten law. In the fifteenth century this was perceived as valid less because it had been agreed on at a given moment in the past than because it reflected a custom from time immemorial. The “olden days” were of interest not only for incidents that set a course for the present but also for very unspectacular events to which normative significance for the present was increasingly attributed.

Age-Old Law

Even in less strongly stylized witness deposition statements of the fifteenth century, efforts to anchor customs in a deep past are visible. During this period witness statements increasingly asserted that a particular law had been practiced for a very long time without giving specific examples of it. Instead the witnesses said that they had learned this from reliable people whose experience reached much further back than their own. In witness depositions from as early as the fourteenth century, a few witnesses repeated reports that they knew secondhand, from “their forebears” or “very old men”; occasionally, one of them was reportedly “in his hundreds.”¹⁰³

From the middle of the fifteenth century, memories that were extended in this way were drawn out still further. First, witnesses more often reported stories that they knew not only at second- but even third-hand. In this they sometimes followed a pattern according to which the testifying witness had once heard the story from a man who was more than a hundred years old at the time, who in turn had been told it by his elderly father.¹⁰⁴ Second, the witnesses began to give downright biblical information about the ages of their sources. Witness deposition records in favor of the cloister of Interlaken in 1478 contained statements that no longer reported sources who were only 90 or 100 years old but also some who were 110 or 120.¹⁰⁵ The records of one witness deposition conducted in 1494 in Heimberg contain secondhand reports that the witnesses heard from men who reportedly not only were 120 or 130 years old, but were old enough to remember that far back!¹⁰⁶

It seems paradoxical that such witness statements appeared precisely at the time that statements based on hearsay were met with increasing skepticism. At least since around 1400, inquiry procedures, as well as the techniques for the evaluation of witness deposition records, required primarily eyewitness accounts. The contradiction can be qualified, however, when it is considered that such old memories never stood on their own but rather served to support more recent examples of the observance of a law. It was characteristic of reports that justified laws based on the distant past which emerged in the fifteenth century that the disputed law was always observed then in precisely the same way as in the present. Thus old and new could more strongly merge with each other than in reports about legal relationships that were created or changed in the distant past.¹⁰⁷

Witness deposition records that were produced in the Savoyard territory contain as a rule neither obviously fairytale-like reports nor information about fantastically old storytellers. This may well be due to the fact that the Savoyard commissioners of the fifteenth century mostly adopted inquiry grids that were remarkably detailed and divided into standardized subquestions and stipulations, which left little room for excessive answers. However, from around 1430, the Savoyard commissioners themselves elicited explicit statements about the age of unwritten laws. They asked the witnesses, for example, who had adopted the disputed legal customs (*consuetudines*) or how far back into the past their observance could be traced. Such questions are first identifiable in a witness deposition record from 1433. At that time many witnesses answered bluntly that they did not know.¹⁰⁸ Others were at least sure that a *consuetudo* had been adopted before their birth—one estimated perhaps fifty, another perhaps two hundred years earlier. Other witnesses said vaguely that they had heard that the adoption of the *consuetudo* went back to the predecessors of the lords and inhabitants of the region or simply back to the “oldest men” of the land, “about which one cannot know anything”.¹⁰⁹

A witness deposition from 1437, in which virtually only notaries and high officials were examined, contains both similar and more radical answers: the *consuetudines* had existed since the founding of the land of Vaud (“a fundatione dicte patrie”); they were already being followed before the written law had been invented; or the emperor had introduced them at the beginning of the world (“ab initio mundi”; for the phrase, see Matt. 24:21). In a witness deposition from 1439, a notary said that he had heard that the inhabitants of the town of Moudon had practiced their legal customs for eternity (“ab eterno”).¹¹⁰ A witness who was a doctor of both canon and civil law went against the common conception that *consuetudo* was older than the law itself, though he did not deny that the *consuetudo* was of great age: namely, it was first established in the generation of Adam’s son Cain.¹¹¹ All these statements reflect the assumption on which the composition of Savoyard and most other witness deposition procedures of the fifteenth century rested: they assumed that legal customs had no divine character or transcendent final cause but rather could be derived entirely from facts about human customs, which had all the more weight the further they could be traced into the past—ultimately, back to the Fall of Man.

Certainly narratives about a dim past contained in witness deposition statements seized on certain components of a cultural memory that were recorded in chronicles, documents, monastic traditional histories, fairy- and folktales. Nonetheless, the specific laws that witness deposition procedures were supposed to explain were not necessarily associated with established collective conceptions of the past. Rather, some witnesses seem to have seized on such elements of cultural memory individually and in different ways, and only when they were interrogated at the instigation of the inquiry did they associate the debated law with these elements. Their reliance on common images of the past appears primarily to be an argumentation strategy that aimed to portray even debated points of the legal situation as components of a widely shared body of knowledge.

At the transition to the modern period, the forms and functions of this argumentation strategy changed fundamentally. In statements before 1400 even the most legendary past appears as a period during which there could be legitimate changes to the law, which is how the laws claimed in the present came into being in the first place. In contrast, statements of the fifteenth century portray legal customs in the present increasingly in continuity with everyday practices that had always been the same. This spurred the use of descriptions of supposedly very old, everyday situations, which is consistent with a new understanding of legal customs as very old and therefore altogether nonnegotiable. There was nothing particularly popular about this understanding. The most radical statements about the age of legal customs were made by notaries and learned jurists. On the one hand, they saw *consuetudines* in contrast to learned law, and on the other hand, they tried to find convincing reasons for them to be valid alongside the law.

In summing up, we can relate the main results of this chapter to the different steps in the production of records, beginning with the physical characteristics and layout of the documents, continuing through the ways of constructing the witness statements, and concluding with their relationship to collective memory. The changes in the physical characteristics of witness deposition records from documents with running text to scrolls with division markers and finally to highly organized books were closely connected with the changing practices of their reception. While having the statements heard by the court stood in the foreground in the early phases, visual reading later came to prominence, and in the end quantification became central. Thus the techniques for the arrangement and analysis of records adapted themselves gradually to an understanding by which unwritten laws could be discovered like facts and needed to be the object of a knowledge spread through the whole population.

How could examples of everyday activities be described in such a way that they provided reliable evidence of authoritative norms? One answer lies in the fact that, in the context of a witness deposition, examinations were called for, formulated, and recorded in stylized forms. In these forms normative elements of different kinds had influence, sometimes as ideas about what behaviors and expressions were perceived as characteristic or typical. In this way the reports molded factual past events into a form of description whereby they could establish the derivation of generally binding regulations. In the course of the period under examination, the style and themes of the witness statements changed. In older records reports about ritualized forms for the unwritten transmission of legal regulations or about particular experiences and statements that created the contemporary legal situations tended to dominate. Beginning in records of the fourteenth century, these reports expanded to include the most diverse of everyday situations. An ever more important criterion for the authority of unwritten regulations was the extent to which these corresponded with common practices. Thus information about the accompanying circumstances of the legally relevant activities acquired an increasing significance as evidence of the habitual observance of regulations. This understanding led jurists and notaries who were familiar with learned law to fantastic-seeming assertions about the age of the debated customs and to stories about how they had been continually followed since a fairytale-like "dim past."

The mere fact that witness examinations about valid laws were carried out raises the question of whether the statements they recovered fulfilled the hope of finding a discernable collective legal consciousness that had already been handed down through an unwritten culture of memory before the inquiry. In fact, those examined often attributed their knowledge of ceremonial forms for the oral declaration of law during court procedures to

the statements of acknowledged legal experts and drew on popular ideas and narratives. Yet this does not necessarily mean that the legal contents actually under debate were themselves components of a stable cultural memory and a social consensus. It is more likely that such descriptive techniques were used to lend authority to debated points of the legal situation by intertwining them with conceptions that linked them to the consensus and thus portrayed them as components of a cultural memory.

The later witness deposition records were created, the more specifically they suggest a traditional legal culture and political order. At the end of this development, regulations were consequently justified by the fact that people had observed them in their activities since time immemorial. Laws were therefore equated with traditions, so that the difference between norm and practice was obscured. The narrative techniques that promoted such pictures were produced not by a traditional peasant culture but rather by new, learned procedures for the delineation of law as well as the production and examination of records. Portraying laws as virtually folkloric reflected an ambivalent attitude toward the witnesses. In the time around 1300, witness depositions were still made for those who decided the dispute and who listened word for word to what the witnesses had to say about the law. In contrast, witnesses in the fifteenth century were increasingly understood as representatives of a homogeneous population, and their statements were not so much heard as they were subjected to rigid examination and quantitative analysis. The very techniques that based the law on the knowledge and practices of the population made it possible to objectify this population and its knowledge, and to give learned experts the last word in the establishment of law.

CHAPTER 4

perpetuate what could be called “the Grimm paradigm” continue to hold that Weistümer are expressions of a rural society that was still largely unlettered, localized, and organized in simple ways—in short, “traditional”—even at the beginning of the modern era. Such an understanding of Weistümer fits into narratives of modernization that posit a close connection between the spread of the use of writing in legal life and the transition to modern, centralized, and bureaucratic administrative and legislative practices.⁵ The moment of the recording of the Weistümer would thus itself mark the threshold of modernity.

The certainty with which Weistümer have been considered expressions of a traditional culture is astounding, for as interested as researchers have been in their contents, very little is known about how Weistümer were created and used. These questions will be examined in this chapter. Until now most studies have accepted the accounts given in the Weistümer themselves and have assumed that they were created by scribes who wrote down how peasants had orally declared the law at a manorial court. A few critical voices have nonetheless objected that older documents especially were created on behalf of the lords and may have been composed merely to appear to be the statements of their dependents.⁶ But even such objections have not motivated scholars to take a closer look at the practicalities of the documents’ production. Through our investigation of how manorial courts took place, we have already shown that in general these procedures are not accurately portrayed in Weistümer.⁷ Despite their flavor of orality, Weistümer need to be examined as the products of a written culture rather than of an oral tradition; they need to be related to written practice and the usage of documents.

In older research the problem of Weistümer usage was overshadowed by two separate controversies. One was the question of why the source genre originally developed.⁸ The other, which dominated Weistümer research during the entire twentieth century, was whether the contents of Weistümer predominantly reflected the interests of peasants or those of their lords.⁹ Even aside from the fact that categories like “lords” and “peasants” hardly describe cohesive interest groups, it has long been too little noted that the question of who benefited from a legal record must be answered less with reference to its contents than to its application.¹⁰ Only thus can suppositions about the connection between Weistümer and traditional social settings be subjected to critical examination.

Weistümer research established itself in the course of the twentieth century as a specialized research field that treated Weistümer as a supraregional phenomenon, as documents that were thought to be relatively uniform and quite clearly distinguished from other genres. This lent particular intensity to a second large controversy: that over the definition of the genre. Most discussions to date have been based around the question of how real Weistümer were related to the legal declarations in the manorial

court. Thus Karl-Heinz Spiess claimed that only records in which legal regulations are explicitly associated with the contents of legal declarations in the manorial court should be designated as Weistümer. Such documents can, however, relate to the manorial courts in very different ways:¹¹ Many records prescribe that, in the future, the listed regulations should be declared in every manorial court. Others claim that their contents were declared at a manorial court on a particular date in the past. And a third type traces regulations back to an old tradition of uniform declarations at regularly held manorial courts; in these, this connection is sometimes implied rather than explicitly stated by a preamble or by an initial set of regulations describing the regular course of such legal declaration ceremonies. In fact, these basic types can mix with one another in many ways, and the question about the exact kind of reference to manorial courts should be asked not only for every Weistum but even for each different redaction of the same Weistum.

The definition of the document genre adopted here does not aim at excluding alternative forms of records of local law from the study but rather at facilitating the discussion on the relationship between Weistümer and other types of records. For if one turns one's gaze to the ways Weistümer were used, one sees that they unfailingly appear in close connection with diverse other documents. Likewise, methods for the production and the editorial revision of Weistümer can be considered largely as techniques for translating material from other types of records. The first sections of this chapter place Weistümer in the wider context of the various document genres associated with the practice of local lordship. This discussion will show the specific practices associated with recording laws in the form of Weistümer, how they spread, and the concrete occasions for which they were created. The subsequent sections join questions about how the documents were put into action with those of how they were acted on. This chapter analyzes documents from groups of extant Weistümer from German-speaking regions, like those of the Zürich Grossmünster, and from French-speaking regions, including those of Romainmôtier and Lausanne. All of these were represented in Grimm's collection and have been cited numerous times as examples of Weistümer with particularly old roots.¹² These groups of manuscripts are so numerous that it becomes possible to tell how, why, and on whose behalf the Weistümer were created, and how they were adapted to changing cultures of lordship through editorial redaction.

Differentiations of Genres

Anyone wishing to approach the practicalities of the written recording of local laws must examine Weistümer in conjunction with other forms of local law records, for such comparisons make the specific organizational models and practices associated with the depiction of laws in Weistümer especially

clear. Given the present relatively advanced state of the project of assembling and editing Weistümer, one can confidently state that true Weistümer in the area of present-day Switzerland began to emerge hesitantly in the second half of the thirteenth century, and that their production gathered speed in the fourteenth and above all the fifteenth century.¹³ Despite all the qualifications that should be made with regard to the changing conditions for source survival, the pattern in the extant Weistümer cannot be explained without assuming an increase in the creation of such records toward the end of the Middle Ages. The sections that follow begin with the records of local laws from the thirteenth century, which allows us to observe the spread of Weistümer as associated with the process of the differentiation of document genres. The subsequent discussion deals with the fourteenth and fifteenth centuries, and thus with the period when the majority of extant Weistümer were created. Here variants in ways of recording local laws will be discussed, as well as transmission patterns and the occasions for the creation of Weistümer. These discussions ultimately aim to provide a precise picture of the need for regulation that undergirded the recording of Weistümer.

Forerunners in the Thirteenth Century

“Cono, the provost of Lausanne, went to Dommartin.” A whole series of entries in the cartulary of the chapter of Lausanne that were created during the first decades of the thirteenth century begin with sentences of this kind.¹⁴ According to information in other cartulary entries, the longtime provost Cono also traveled to many other places in which his chapter claimed lordship rights, in addition to Dommartin, north of Lausanne. In these venues he arbitrated disputes, delegated benefices, or received fealty from his vassals. Three entries require special attention here. Grimm included them in his Weistum collection, and they are, in fact, among the earliest discernable attempts in the region under examination to inventory local rural legal organizations in writing in a manner similar to that of a Weistum—although they also differ from Weistümer in several respects.¹⁵

The three entries concern the localities of Crans (1212), Saint-Prex (1221), and Dommartin (1230). Each entry refers to a dated occurrence of the establishment of local laws. On each occasion Provost Cono apparently personally visited the place in question, where he met with numerous people—canons of the chapter, priests and knights from the vicinity, the local officials of the chapter, and other local residents. Those assembled acknowledged (*recognoverunt*) a whole series of rights and obligations, which has led modern editors to describe this type of record as a *recognitio*.

All three *recognitiones* record a few regulations that concern the relationship between the chapter as lord and the totality of its local dependents. These include indications of the extent of the jurisdictional

rights of the chapter, the geographic boundaries of its lordship claims (*Umkreise*), and fines that should be levied for specific infractions. Additionally, especially in the entries on Crans and Saint-Prex, there are numerous entangled stipulations that apply only to a few dependents. They are sometimes enumerated in lists and describe, for example, extra cartage, labor, and hospitality obligations owed by individuals. The description of recognitions is complicated by the fact that they also include records of the rights and obligations of the lordly officials, such as the local cellarer, *maior*, and steward. They all had organizational duties to perform, but they also had dues to claim—some from the chapter itself, others only from the provost, and some even from one another—and these beneficiaries often then had to split the proceeds with others. These entries differ fundamentally from other documents that are quite numerous for the period, such as fief contracts (*Lehensverträge*), which usually record only the rights and obligations between two parties.¹⁶ These instead provide a complex, detailed overview of local networks of obligations among very different parties that were in many ways interdependent: a true legal microcosm.

The entries in the cartulary thus reflect a descriptive principle that seems to be a fundamental characteristic of Weistümer. Among the early, quite reliably datable, examples from the region are the Weistümer from Romainmôtier (1266), Apples (1327), Höngg (1338), and Birmensdorf (1330–47).¹⁷ The overwhelming majority of such Weistümer also listed the rights of different holders of lordships, fiefs, and offices alongside one another, and thus divided local claims of the landlords and stewards and a series of local officials from one another.¹⁸ The actual affairs regulated in the three entries in the cartulary also match the issues addressed in later Weistümer. Among these are stipulations about the division and execution of jurisdictional rights, as well as the dues and labor obligations that different holders of lordship in a given place could claim. Many Weistümer, furthermore, regulate the use of common lands, meadows, or forests, and contain stipulations about the rights of dependents to alienate goods or to extricate themselves from the lordship (such as *Ungenossamenehe*—that is, marriage with dependents of other lordships—or relocation). This focus on the network of rights in a region was apparently associated quite early with the need to refer regulations not simply to bilateral agreements, as in fief records, but also to local assemblies attended by all the great and small potentates who were bound to the place through various rights and obligations in addition to the local people and their lordship. Such assemblies were less bilateral than they were multilateral.

In several respects, however, the entries in the cartulary of Lausanne are also different from Weistümer of the fourteenth and fifteenth centuries. First, the cartulary entries do not identify the established rights as the contents of regular declarations of old legal customs at manorial courts. Although the personnel attending the assemblies at which Provost Cono appeared

resemble those attending the manorial courts, there are many indications that these assemblies were not the regular manorial courts. The entries for Crans and Saint-Prex, for example, mention local regularly held manorial courts (*plaits*) incidentally, but only as occasions when the local officials collected dues.¹⁹ In contrast, the provost appears to have summoned the assembly being described on specific occasions. The entry for Dommartin explicitly remarks that the assembly was especially summoned to settle violent disputes among the local inhabitants in which several people had been wounded.²⁰ There is no reference in the entries to the concept of the assembly establishing old law. A few passages, in contrast, describe how new regulations were proposed, discussed, and agreed to or rejected. Thus the people of Dommartin, perhaps on the grounds of their experiences during the most recent conflicts, requested that, in the future, there should be a double fine for violent assaults perpetrated within the local castle. This regulation was then established with the agreement of all present (“*de assensu omnium qui erant presentes ... fuit statutum*”). In contrast, in Saint-Prex, “*omnes de villa*” refused a request of the *maior* that in the future he should receive a loaf of white bread from every household yearly. Just as in witness deposition procedures of the thirteenth century, one of the grounds for justifying the established regulations is the mere fact that they had been agreed on in a procedure that was accepted by those involved.²¹

Rent Rolls and Weistümer

Another fundamental difference between the entries in the cartulary of Lausanne and later Weistümer concerns the manner of describing the obligations of local dependents. Apart from some minimal exceptions, Weistümer of the fourteenth and fifteenth centuries list the rights and obligations that applied to all the dependents of a place. At best, a typical Weistum distinguishes between different categories of dependents, such as those bound personally or through their holding of land, but not between individual persons or plots of land. In contrast, the cartulary entries seem confusing to the present-day reader not least because they list the rights and obligations of individual lords or officials as well as those of individual dependents, and sometimes take the form of lists of obligations that were attached to individual people and plots of land. That such forms of description can be identified at such an early date possibly confirms the thesis of Charles-Edmond Perrin that Weistümer developed out of lists of rent dues and descriptions of plots of land from the central Middle Ages, which anticipated the descriptive elements of late medieval rent rolls (*Urbare*).²²

While the question of the earliest origins of Weistümer can scarcely be conclusively answered in light of the few early extant texts, it is beyond doubt that Weistümer on the one hand and lists of dues on the other were

two clearly distinguishable types of records of local legal relationships by the end of the Middle Ages, especially with regard to their formal arrangement and contents. In the extant documents of the fourteenth and fifteenth centuries, one finds *Weistümer* and related types of documents that describe local legal regulations that were binding for the totality of the local dependents. As a rule, these are physical artifacts distinct from the other types of documents, which can be described as rent rolls in the widest sense: they record the dues and obligations of named persons and plots of land in list form.²³ These two forms of description are almost never as seamlessly combined in later versions of the documents as they are in the entries from the Lausanne cartulary from the early thirteenth century. In a few documents from around 1300, the two forms of description are still mixed, but they appear to be the results of two distinct inquiry procedures, unlike those in the cartulary of Lausanne: while individual questioning was adopted to establish the dues and obligations of individual dependents, regulations that concerned all local inhabitants were investigated collectively, often by the assembled male village residents.²⁴ Apparently lordships felt a growing need to legitimize the establishment of dependents' individual and collective obligations through different procedures.

The differentiation between the two types of records—rent rolls and *Weistümer*—noticeably solidified in the course of the fourteenth and fifteenth centuries.²⁵ Instead of being intermixed, the two types of records seemed at the end of the Middle Ages increasingly to be complementary. Precisely this complementarity provides important clues to the descriptive needs that lay at the root of the spread of *Weistümer*. It was not primarily a question of the difference between economic and political obligations—a distinction that seemed so obvious to modern eyes that editors often included *Weistümer* in collections of legal sources and rent rolls in collections of economic sources.²⁶ Even the proposal that *Weistümer* were intended to reassemble in one place the rights of a lordship that were fragmented in different rent rolls²⁷ is at best helpful only for regulations on dues but not for the numerous other norms usually included in *Weistümer*.

An important characteristic of all the lordship rights described in *Weistümer* but not in rent rolls is that they apply universally to all the dependents in a given locale. The restrictions on such rights also fundamentally differentiate later *Weistümer* from records like those of the early thirteenth-century Lausanne cartulary, which also record obligations between lordship representatives and individual dependents. Compared with such documents, *Weistümer* allowed lords and their anonymously described dependents to be categorically separated from each other and made the gap between the two seem particularly large. The description of the dependents as a homogenous category implies that they can be understood as a unified collective. Only a few *Weistümer*, however, refer explicitly to an established form of political self-government of this collective with terms like

universitas, *communitas*, or commune (*Gemeinde*). In contrast, they associate the laws they record with declarations at a regularly held village manorial court and thus with an institutionalized form of local organization. It is obvious that this increasing focus on organized local collectives can be set in a broader context of village formation processes. Here we will focus less on the dimensions of this process concerned with settlement patterns and collective production (which began much earlier) than on the legal and political dimensions of village organization, which first became detectable in the very late Middle Ages with the formation of communal self-government and a new focus on villages as lordly administrative units.²⁸

In the course of the late Middle Ages, lists of individual dues and obligations (*Urbare*) were gradually differentiated from records of regulations that concerned all the residents of a place (*Weistümer* and their forerunners), and the latter documents appeared with much greater frequency. This development indicates a growing need to define coherent legal orders for particular places. In an early phase, matters of legal organization were often relegated to the proceedings of an assembly summoned ad hoc. From the fourteenth century, however, *Weistümer* in the strict sense became increasingly prevalent, and they based the local order on the regular pronouncements of established law at manorial court assemblies. The fact that documents that portrayed the legal order essentially as unchangeable characteristics of local villages proliferated so quickly is partially due to the new practices this made possible. This is the theme of the following section.

Alternatives and Occasions for Recording the Law

Weistümer were by no means the only document genre through which laws could be rooted in particular places and in characteristically local collectives. *Weistümer* were one of several means of recording local regulations that were available at the end of the thirteenth century. The extent to which this potential was realized varied strongly. In what follows we will first describe the diffusion patterns of these types of records. Next, alternative forms for recording local laws will be compared with one another, and the reasons for their creation will be discussed. Finally, we will identify more precisely the specific descriptive principles and applications of *Weistümer*.

Diffusion

In a comparative European context, very different types of records of local law can be identified for the late Middle Ages, some of them unique to a specific region. The diffusion of documents that can be described as *Weistümer* is largely restricted to an area that includes the southern

Germanspeaking regions and the Rhineland, and the eastern French-speaking regions (Belgium, Lorraine, Alsace, Franche-Comté, and Suisse Romande).²⁹ The extant body of sources provides little support for the still widely held assumption that Weistümer are more a German than a French phenomenon. Systematic indexing work has uncovered similarly plentiful extant Weistümer collections for the French-speaking area of the prince-bishopric of Basel in the Jura and the German-speaking vicinity of the city of Zürich.³⁰

A more precise quantitative survey of the geographic diffusion of Weistümer would face enormous methodological problems. Among these is the fact that the various academic cataloguing projects for particular regions have adopted very different criteria for designating documents as Weistümer. In addition, there are disproportionately more difficulties than is the case with, say, charters or witness deposition records, in dividing families of Weistümer into discrete units. Weistümer are remarkably fluid texts. They are often extant for the same locale in numerous, only partially datable drafts whose phrasings sometimes differ only slightly from one another. Such versions are difficult to categorize simply as “rough draft,” “original,” or “copy.” Sometimes in the course of rewriting, a Weistum that applied equally to several places was divided into several Weistümer, each of them valid in only a single place. In other cases, the reverse was true, and the Weistümer of several locales were assembled into a single, regional, “unified Weistum.”³¹ Who can determine a precise number for these?

Certain irregularities in the geographic distribution of extant Weistümer can nonetheless be identified without exact numbers. The number of Weistümer available correlates less with cultural-linguistic region than with the nature of the local holder of lordship. For the early period, until perhaps the middle of the fourteenth century, practically the only extant Weistümer are for localities that were subject to ecclesiastical holders of lordship. Lower chances of preservation could perhaps explain why Weistümer cannot be easily identified for many small noble lords until around 1400.³² In a few regions, such as the Zürich hinterland, where the city claimed to have territorial lordship rights, a sharp increase can be observed, in the fifteenth century, in the number of extant Weistümer for local lay lordships, which were being bought up by urban burghers at that time.³³ In contrast, there is still little evidence of Weistümer for local noble lords in the area of the Savoyard territorial lordship—an area for which rich sources have survived. It seems that numerous local lordships did without recording Weistümer for a long time, perhaps even throughout the entire late Middle Ages.

The body of extant sources also indicates that the great lordships with territorial ambitions adopted Weistümer to very different extents. Thus, so far, no Weistum has been identified whose recording can be traced back to the direct initiative of the largest and most tightly organized of the territorial lordships of the region, that of the counts (and, later, dukes) of Savoy. In

contrast, several smaller territorial lordships within the Savoyard sphere of influence recorded Weistümer. This is true for the counts of Valangin and Neuchâtel³⁴ and even more markedly so for ecclesiastical territorial lords like the bishop of Lausanne and the priories of Romainmôtier and Payerne, who furthermore assigned a great deal of significance to Weistümer as expressions of the local legal order.³⁵ Irmtraut Eder has argued on the basis of her study of Weistümer from Saarland that these should be understood as instruments by which weak lordships in particular, who struggled to assert their independence in the process of territory formation, sought to secure their rights. Such a characterization of Weistümer as instruments of the potential “losers” of the territorializing process is contradicted by the fact that, in the region under examination, very successful territorial lords, like the urban communes of Bern and Zürich, frequently initiated the recording of Weistümer from around 1400 onward.³⁶

Although it is rather obvious that the extent to which individual lay holders of lordship took part in the recording of Weistümer varied widely, it is difficult to link this directly to particular traits, such as the executive power of these lordships, as Eder does. However, the distribution of extant sources does indicate that the interest in Weistümer had to do with the relationship between the holders of local lordship rights and territorial powers, and that Weistümer were less important where this relationship was strongly institutionalized. During the thirteenth century the counts of Savoy had acquired overlordship over most of the local lordships in the Pays de Vaud and had delegated these in turn to local nobles as fiefs. This made it possible to take conflicts between local vassals as well as conflicts between them and the Savoyard central administration to the courts of the territorial lord, which sometimes had the disputed laws clarified in witness depositions. In light of such patterns of conflict resolution, there might not have been a pressing need for Weistümer on the part of either the territorial lordship or the local lordships. In many cases, however, such institutional contexts furnish no overall explanation for the pattern of Weistümer diffusion, for which a notable amount of irregularity is almost characteristic. This reality should be understood in relation to the fact that there were numerous alternatives to the recording of laws in the form of Weistümer.

Alternatives

Even in lordships for which there are numerous extant Weistümer, several additional types of records were used to establish regulations that are consistent with the typical contents of Weistümer. From the thirteenth century, there were agreements between several co-lords, or between landlords and stewards, occasionally extant in the form of charters. In these charters, the parties divided local lordship rights between themselves and agreed on regulations that are strongly reminiscent of those in Weistümer,

but without the participation of their dependents.³⁷ Conversely, several documents, primarily from the fifteenth century, attest to how the dependents of a village could also agree among themselves on regulations that were described explicitly as changes to the current legal order, even outside the manorial court, with the authorization of their lordship. Such regulations, whose procedures for establishing the law are reminiscent of urban statutes, concern primarily only limited matters, such as stipulations for inheritance law or the use of mountain meadows.³⁸ In addition there are documents from the fourteenth and fifteenth centuries that can be described as *recognitiones*; these report regulations resulting from ad hoc assemblies involving lordship representatives and local dependents without reference to regular legal declarations at manorial courts.³⁹ If one also takes into account records of procedures that approximated early modern homage ceremonies (*Huldigungsakten*), the number of extant fifteenth-century examples of this type increases even more.⁴⁰

Charters of privileges for rural localities, manorial regulations, and charters recording the verdicts of arbitration panels were notably widespread forms for the recording of local laws. The legal content of these types of documents often resembles that of Weistümer so much that modern editors have included them in Weistum collections. But such documents in fact organized laws in very different legitimizing frameworks. Charters of privileges described the local legal order as a result of a lordship's intentional altering of the law to grant favors to its dependents.⁴¹ Acute conflicts about the local legal order between multiple lordships as well as between a lordship and its dependents were often not settled before the manorial court but before potentates from the neighborhood who functioned as arbitrators and whose decisions established whole series of local legal regulations.⁴² Where the first concern was to establish a consensus about local legal regulations within a lordship structure, manorial regulations served that purpose. Like Weistümer, these listed whole series of local rules whose authority was often not even justified at all, or at best a regulation was identified as a unilateral promulgation by the relevant lordship. Thus they contained no mention of legal declarations at regular manorial courts or at extraordinary assemblies or even general information about the ratification of the regulations by a neutral or superior court instance.⁴³

None of these document types portrays local norms the way Weistümer do, as components of a static local legal order that was authenticated through regular pronouncements at manorial courts, and that could be established but not altered. What we can see from this is that rural legal reasoning did not require the invocation of an old, received law that is portrayed in Weistümer. These concepts should, therefore, not be assumed—as has been the case consistently since the eras of Grimm and Kern—to be uncircumventable expressions of rural mentality. Manorial regulations did not address the age and immutability of law, at least not explicitly, and in

charters of privileges as well as in arbitration court records, regulations could indeed be described as the results of intentional changes to the legal order. The recording of laws in the form of Weistümer thus apparently corresponds to very specific choices regarding their intended presentation. To clarify their origins more precisely, the following section will discuss the circumstances under which Weistümer were recorded and revised.

Occasions

For most extant Weistümer whose dates of composition are somewhat definable, the concrete occasion for their creation can at best be guessed at. A few were obviously produced in the context of tensions between competing local holders of lordship. These entities needed Weistümer to define their legal claims against those of their competitors, who are almost never explicitly mentioned in the phrasing of the Weistum.⁴⁴ In many cases in which the cause for the creation, copying, or editing of a Weistum can be more fully grasped, changes in the holder of lordship rights are involved. In one charter of a court verdict from 1430, for which one party submitted the Weistum of Alstetten as evidence, we learn that it had been recorded a few years before due to the sale of the local stewardship rights.⁴⁵ In 1539 the representatives of nobles who had just inherited the stewardship rights over the Zürich village Berg am Irchel asked the council of the city of Zürich for a certified copy of the local Weistum, as it had been entered into the Zürich city records on an earlier occasion. In this case, those making the request explicitly referred to the fact that they needed such a document, especially because they wanted to be able to document their rights before the court in the future.⁴⁶

After the city of Bern acquired the large landgraviate of Lesser Burgundy in 1406 and absorbed its territories, representatives of the city council collected Weistümer during a short period in the summer of 1409 in three important manorial courts in the area. The extant documents state that the purpose of this undertaking was to establish the lordship rights that the city could claim in this newly (“núwlingen”) acquired territory.⁴⁷ The city officials seem not to have been plagued by nagging doubts about the extent of these rights. In fact, these three Weistümer are among the few in the region to describe the declaration ceremony precisely as a procedure that was structured around questions from the lord and answers from the dependents. Nonetheless, the phrasings of all three manorial courts are practically identical—they must therefore have been established before the inquiry was carried out. During the process of recording the Weistümer, it seems that the city aimed to create documents through which they could legitimize their new lordship claims against outsiders.

The passing of inheritance, the sale of land, and changes in vassal relationships often led to changes in the setup of a seignury. Plots of land

that had earlier been in different hands were joined together, or rights that had until now been singly administered were divided among multiple lordships, all of which could provide reasons to write and rewrite Weistümer. The latter case explains why two different Weistümer were created at the same time for the village of Meilen, near Lake Zürich. There the provost of the Zürich Grossmünster college of canons held both the landlord and the stewardship rights, which had been recorded around the middle of the fourteenth century in manorial regulations that were copied in the statute books of the college.⁴⁸ When the provost pawned his stewardship rights over Meilen to the city of Zürich in 1424, while retaining the landlord rights himself,⁴⁹ one Weistum was recorded about the rights of Zürich as steward and one about that of the Grossmünster as landlord; both Weistümer contained stipulations about the competencies of the officials and the defense of the dependents from unjust claims of the other lord. Both Weistümer consist largely of German translations of the Latin stipulations in the old manorial regulations, but the content was divided between the two different documents.⁵⁰

When lordship rights over locales for which there were already extant Weistümer changed hands in unaltered form, the change to the new lordship relationship required only the slightest of changes in phrasing. After the city of Zürich bought the stewardship rights over the village of Alstetten from Zürich citizen Johannes Tumb in 1431, their scribe edited the Weistum that the seller had had collected in 1429, when he had bought the lordship. The new version retained not only the description of the declaration ceremony but also its dating to 1429; but when the new version named the holder of the lordship rights that were enumerated, instead of the name of the steward at that time, it simply inserted “my lords of Zürich” (“min herren von Zürich”).⁵¹ Such rudimentary adaptations of Weistümer to new lordship relationships scarcely required a declaration in the manorial court but rather were carried out by the lordly chancellery at their own direction.

More than virtually any other type of document, Weistümer are suited to describing local legal regulations as attributes of a place that were valid no matter who held the lordship at the moment. References to this type of description of the local legal order were made especially frequently in negotiating the claims of lordships whose relationship to one another was not already closely regulated by another intensive legal relationship, such as affiliation with the same lord or citizenship in the same city. Paradoxically, the Weistümer’s characteristic way of describing local legal orders as strongly fixed enabled the mobilization of local lordship rights, which became increasingly important during the late Middle Ages. Laws formulated in this way could easily be incorporated into the organizational structures of greater territorial administrative complexes, used as foundations for the duties of temporarily appointed officials, methodically divided among several holders of lordship, and even alienated through sale,

pledge, or loan to a third party.

Processes of Production: The Zürich Grossmünster

As will be shown here, the recording of Weistümer was often driven less by unique incidents than by processes lasting over extended time periods. Our observations on the implementation of manorial courts have already shown that the contents of Weistümer can scarcely be attributed solely to oral declarations (see [Chapter 1](#)). First, declarations at the manorial court were often strongly focused on conflicts of the moment, and they yielded singular regulations rather than the kind of comprehensive local legal order that we find described in Weistümer. Second, such declarations could certainly consist of the reading aloud of regulations that were already recorded in writing.⁵²

Although Weistümer explicitly refer to written precedents only very rarely,⁵³ these played an important role in their formation. This is indicated by the fact that many Weistümer are extant in numerous redactions that differ from one another. Even when previous researchers did not overlook the numerous redactions altogether, they saw these primarily as obstacles in their search for the most original version, the one that was closest to an oral declaration. Thus they did not seize the chance to use the evidence of textual transmission as an entry point into a discussion of the production and practical relevance of Weistümer. Each redaction provides evidence of its intended use, and the processes for editing older documents not only were components of the culture of usage but also indicate how that culture changed.

From this point of view, the problem of the relationship of Weistümer to oral tradition is no longer simply a question of the source of an original text. Different versions of a Weistüm often diverge precisely in the way that they position themselves vis-à-vis oral tradition. Often these differences cannot simply be traced so that one version is closer to the oral version than another. Today, thanks to new developments in medieval linguistic and literary scholarship, there is far-reaching agreement that formulas evocative of orality embedded in written records cannot automatically be considered traces of a text's origin in the spoken word. Such phrases can also be embedded in a frame of elaborate editorial revisions that aimed at eliciting particular conceptions about their origin or in order to facilitate particular types of usage.⁵⁴ These findings deserve increased attention in the study of legal records.

In what follows we will first discuss the legal records for places that belonged to the lay lordship of the Grossmünster college of canons of St. Felix and Regula in Zürich. The early phases of the production of such records can be reconstructed mainly on the basis of the so-called statute

books (*Statutenbücher*) of the college.⁵⁵ These consist of two basically identical volumes, created in 1344, one of which was apparently intended for the provost and one for the college. The elaborate configuration of both exemplars resembles that of liturgical books. Both statute books contain an appendix with copies of later documents, including Weistümer and manorial regulations generated shortly before the assembly of the volumes and written in Latin. Also included are copies of many older charters of privileges reaching back as far as the thirteenth century and statutes internal to the college regarding liturgy and the administration of the college's manors, many of which can be identified as forerunners of the manorial regulations and Weistümer mentioned earlier. These variegated entries in turn, along with other documents, were templates for new German redactions of Weistümer that were created in the course of the fifteenth century. These were no longer included in the statute books but rather in various other holdings of the college archives. In what follows, the editorial phases of the fourteenth and fifteenth centuries will be presented in succession to clarify how the individual versions were created.

The Territorialization of Law in the Fourteenth Century

The oldest extant versions of the college's records of local law are found in one block at the end of the statute books. These records are prefaced by a short historical report about the alleged founding and endowment of the college by Charlemagne.⁵⁶ This text is followed by a series of entries about legal regulations for the seven villages Höngg, Fluntern, Albisrieden, Rüschlikon, Rüfers, Meilen, and Schwamendingen. All entries contain stipulations regarding lordly jurisdiction rights, the delineation of the rights of noble stewards, and the selection and competencies of village officials of the college. Additional sections contain information about the procedure of law finding in local manorial courts, the total sum of dues that must be collected from the village, and village economic organization, such as the use of meadows or the maintenance of roads and fences.

Only the entry for Höngg qualifies as a Weistum in the strict sense. It is introduced by a paragraph that describes how the subsequent stipulations were declared at a manorial court that allegedly took place in 1338.⁵⁷ In contrast, the other entries are recorded in a conspicuously condensed, scholarly style. It seems they were all produced in a single work process. They can be read only in conjunction with one another and with the record for Höngg. Instead of describing regulations for each place separately, these entries constantly refer to other entries in the statute books or to one another, using, for example, the form "as is written above regarding the court at Höngg" ("quod suprascriptum est in curia Höngge"). The entry for Rüfers relies heavily on a series of such references. After a few introductory sentences, it states succinctly that the provost exercised the same

jurisdictional rights in Rüfers as in Albisrieden; that the court should be run according to the same stipulations as for Albisrieden and Rüsclikon; and that the same stipulations were to be observed as in all the other localities belonging to the college for the fencing of meadows, the collection of pledges, the right of first refusal on the sale of land, and the dates of court sessions.⁵⁸

The dependence on other documents also betrays how these legal records were created. Even where explicit cross-references are absent, many phrases prove to be paraphrases of passages from older charters, ordinances, and lists of officeholders' duties, which in many cases were also copied in full into the statute books. At the beginning of all village laws, for example, the right of the provost to hold court in the place twice yearly on specific dates is stated. These passages contain paraphrases of a section from the substantially older list of the provost's duties which the statute books reproduce on the first pages. Among other things, the passage mentions the obligation of the provost to appear twice yearly, at his own expense, in the courtyard of the manor of the college in order to hold court there.⁵⁹ But what the list of duties describes as an obligation of the provost to the college appears in the village laws as a right of the provost and the college over the dependents of the given village. In connection with the list of duties, the statute books itemize manorial dues that the provost could claim personally. In this way, for example, the entry concerning Albisrieden could be translated into an obligation for the collectivity of the dependents of Albisrieden to pay dues to the provost.⁶⁰ Stipulations about the collection of pledges from peasants who were behind in their dues were taken from a list of duties internal to the college probably written before the end of the thirteenth century, specifically those of the cellarer, to whom the dues from such pledges originally belonged.⁶¹ Thus stipulations regarding villages' obligations were formulated using old statutes, which in turn were originally drawn from agreements between members of the college, then reused as a framework for describing the college's lordship claims in village legal records.

There are also inserted passages for which no precedent can be found in the statute books. However, these stipulations may have been copied from templates in more instances than can be demonstrated today. Thus the regulation of meadow usage rights in an entry for Albisrieden matches the wording of a charter that was not included in the statute books but is coincidentally preserved as an original in the archive of the college. It records the decision of an arbitration court from 1332 that settled a dispute between village residents and the urban citizen Rudolf Bors about his right to access the village meadow. When the charter's contents were copied for the village legal text in the statute book, all information about the conflict of 1332 and the parties involved in it was omitted. The passage therefore appears to be a general stipulation of village law. Through such

appropriations in village legal texts, regulations regarding very specific conflicts were effectively transformed into generally applicable village laws.⁶²

Through their appropriation in the Weistümer, regulations of different origins were not simply reproduced but also rooted anew in the individual villages as distinctive geographic units. In everyday administrative practice, the college apparently needed such territorialized descriptions of rights and obligations not primarily for dealing with the peasants living there but rather for regulating the activities of local officials. The late medieval administrative reforms of large ecclesiastical holders of lordship like the Zürich Grossmünster college of canons generally resulted in a “territorialization” of responsibilities: dignitaries like provosts and canons performed temporal administrative responsibilities less and less, instead relegating them to officials who were responsible for individual villages. These officials were responsible for fulfilling the obligations that the legal records assigned to the village: they collected the total sums of lordly dues, seized the assets of dependents who had neglected their payments, convened the manorial court assemblies, and enforced regulations regarding the use of forests, meadows, and common lands. The specific, explicitly listed obligations of these officials occupied an especially prominent place in village legal texts, as did the procedures for their selection.⁶³

Except for the entry for Höngg that was created in the form of a Weistum even in the oldest Latin version, and may have also been available as a freestanding document, the records of village law contained in the statute books were scarcely suited to being read aloud to the dependents at the manorial court assembly, especially because of their physical unwieldiness. Due to the complex structure of references, using the text requires specific consulting and reading techniques with which the canon officials and their scribes were most likely familiar. The heavy, elaborate volumes could not possibly have been intended for regular use outside of the chapter house. They also show no traces of the wear that this would doubtless have involved. The volumes were probably more useful both as reference works regarding specific questions and as authoritative embodiments of the official order in the chapter house, where the local officials received their instructions and settled their accounts with the lordship.

“Oralizing” and Archaizing in the Fifteenth Century

Beginning in the decades around 1400, and over the entire course of the fifteenth century, German redactions were created based on the old Latin versions of village laws that were included in the statute books. Unlike their Latin forerunners, most of these are extant in several copies and in multiple versions. They were demonstrably no longer used only within the

administrative apparatus of the college but also in conflicts with competing holders of lordship. After the withdrawal of Habsburg territorial lordship from the region around 1400, the college was particularly exposed to the rivalry of the city of Zürich, which was now aggressively pursuing the building of its own territory.⁶⁴ Thus some of the new German records for Fluntern were employed in negotiations between the city and the college, and portions were even copied verbatim into the minutes of the Zürich city council. Many of the new versions are extant as entries in small volumes that were best suited for carrying to court and arbitration procedures, which took place far from the chancellery of the college, possibly before the diet of the Swiss Confederation or before a distant imperial court.⁶⁵

Only the German record for Höngg, which even in its oldest Latin version was fashioned as a *Weistum*, is based on a practically verbatim translation. The German versions for the five villages of Fluntern, Albisrieden, Meilen, Rüschlikon, and Rüfers, too, contain some passages that were translated word for word from their Latin forerunners. In addition, however, these records underwent extensive revisions; they, along with other compilations, reflect two editorial techniques that can be categorized as “oralization” and “archaizing.” These terms will be more precisely explained here.

Oralization refers to attempts to shape texts to approximate spoken language. This primarily involved translation into the German vernacular. In addition, most of the records were also refashioned into *Weistümer* in the sense of documents that seem to be derived from the manorial court and its oral tradition. While the Latin versions mentioned at best a vague “*publicatio iurium*” at the manorial court, most of the German versions were now prefaced with exact regulations for carrying out regular legal declarations.⁶⁶ The new introductory passages evoke colorful pictures of solemn meetings between lordship and peasants. They sometimes describe how the manorial court had been announced in advance in the church and how one had to ring the church bells before the assembly to remind those participating to go to the court’s location before their lord.⁶⁷ Other texts describe how peasants were summoned to a consultation before one of them declared the law to the lord, or how the procedure finally concluded festively with communal drinking or feasting.⁶⁸

Such introductory passages suggest an immediate relationship between the *Weistum* procedure and the composition of the regulations that were ultimately established. The seeming proximity of the new German versions to oral legal declarations was strengthened by the abandonment of all crossreferences that the Latin forerunners had collated with the records for other villages and with older entries contained in the statute books. Whereas in Latin versions of the fourteenth century notations like “as is written above in the section on Höngg” required the reader to locate the reference, the German versions contained full translations or at least paraphrases of

the passages that previously were merely cited.⁶⁹ In this way, the records converged with one another in terms of content, but each individual record presented itself as self-contained. The network of interlinkages with other texts—which was characteristic of the Latin versions, with their numerous cross-references—was cut apart. The oral statements of the peasants at the manorial court appear to be the only external point of reference.

Stylistic echoes of oral types of expression also proliferate only in the edited German versions. Where the Latin forerunners made precise statements about quantities, the new German versions often described quantities through vivid narratives. Thus the Latin version of the records for Albisrieden states that the members of the court owed the college an annual due in the form of wood, and on delivering it to the college buildings, the court members were to be entertained with bread. Then not only was the quantity of the shared bread enumerated in an intricate and very precise way, but also the grain content of each loaf: “unum modium tritici in pane et 16 panes de uno quartali tritici.” The German version reduces this information to the catchy formula that one loaf was to be given to the peasants for each wheel of their eight cartloads of wood. Similarly, there follows quite picturesque information about the size of the loaf of white bread with which the college was obliged to pay the local *maior* for specific official duties; each of the loaves had to be so long “that the *maior* can prop it up on the bridge of his foot and he can cut a decent breakfast for his servant off above his knees.”⁷⁰

Such folkloric-seeming formulations were inserted in different places in the new Weistümer. Even the Latin version of the text for Meilen mandates a death tax (*mainmorte*), that is, the right of the provost to collect the most valuable piece of livestock (*besthaupt*) from the inheritance of the survivors when one of his dependents died. But the German version is the first to clarify, using a fairytale-like phrase, that the lordship could not claim other goods as an alternative in the case of a deceased who had no livestock: Where he could find no better livestock, the provost must be satisfied with the “cock from the roof ridge or the cat by the fire” (“Han uf dem Sädel oder die Katz bi dem Für”).⁷¹ These vivid word pictures and catchy formulas were what scholars from Grimm onward have taken as indicators of an immediate derivation of the Weistümer from the folkloric orality of the peasants.⁷² In the case of texts from the Grossmünster, however, most of these stylistic elements were first inserted into the records during the fifteenth century.

The Weistümer were thus made not only “more oral” but also “more archaic.” This is evident in their oddly contradictory relationship with the social changes that the temporal lordship of the Zürich Grossmünster underwent during the middle of the fourteenth century. The rural economic production of the area was increasingly oriented toward the urban marketplace, and communal organizations acquired ever greater regulatory control.⁷³ Lords often surrendered large portions of economic organization to

communes at the end of the late Middle Ages while they instead concentrated on collecting and marketing their dues. The lordly presence on a local level thus took on ever fewer immediate forms.

Against the background of these changes, an entire series of new insertions in the German redactions of the Weistümer during the fifteenth century seem oddly anachronistic. The German redactions describe face-to-face meetings between the college lords and the peasants much more frequently than their Latin forerunners from the fourteenth century. For example, after stipulations about the annually held confirmation vote of the *maior* of Albisrieden, there follows an addition that dictates a ritual transaction, a sort of *convivium*. Here the confirmed *maior* was required to give the steward a gift of a quantity of good wine, which they were to drink on site with the “cooperative of peasants” (*gebursame*). And while the Latin record for Fluntern from the fourteenth century mentions labor obligations only in passing, the German version from around 1500 describes colorfully how the holders of benefices must carry fresh straw to Zürich every six months for the beds of the college lords and must sweep the cloister of the college clean.⁷⁴

It is astonishing that such descriptions were newly included in the Weistümer, for the manor of Fluntern, closely intertwined with the city of Zürich, was largely monetarized and oriented toward the production of wine for the urban market. According to information from lists of dues, a large portion of the local holdings of the college were occupied not by simple peasants but rather by citizens of Zürich who had used the traditional position of a “peasant” in the lending and dependency relationship to the college as a tool for investing capital in the production of wine. In the fourteenth century they included not only representatives of the patrician families of the city, such as the Manesse and the Schwend, but even the counts of Toggenburg. Such people were listed among the “peasants” who, according to the new phrases of the Weistum, were obliged to make the beds of the canons!⁷⁵

A vague feeling that Weistümer describe very old circumstances is apparently precisely what the compilers wanted to evoke in their readers. In fact, phrases that explicitly describe stipulations as old, such as “how it has come about and has customarily been from of old” (“wie als das her ist kommen und gewonlich ist gesin von alter her”), are also numerous in the German versions of the fifteenth century.⁷⁶ Even in the Latin versions, the attempt to make the recorded laws appear old is evident in reports that the college was founded by Charlemagne. But the new German versions no longer sought the connection to the past “from above,” in imperial history, but rather “from below,” in archaic descriptions of everyday lordship practices and in the oral traditions of the “peasants.”

Overall the records of the Grossmünster college of canons in Zürich show how Weistümer could arise from the compilation and revision of older

documents. In sum, this process underwent two phases. Around 1350 regulations of different origins were ripped from their original contexts of creation and assembled into homogeneous legal structures. The documents thus produced concerned primarily the officials of the college, whose competencies and obligations were increasingly described territorially, that is, as attached to particular places. It was only the second stage that lent most records the clear characteristics of a Weistum. Now Latin records were translated into German, intertwined with a supposed tradition of oral legal declarations in manorial courts, and stylistically conformed to peasant ways of speaking—or what scholars imagined them to be. This new form of description made it possible to command the acknowledgment of these records from parties and courts that were in no way connected with the college.

Processes of Production: The Priory of Romainmôtier and the Bishopric of Lausanne

The declaration records (*plaicts généraux*) of localities that were subject to the lordship of the Cluniac priory of Romainmôtier in the Jura Vaudois and to the bishop of Lausanne are reputed to be among the oldest Weistümer. Most of these records are in fact extant in the form of actual Weistümer from around the middle of the fourteenth century, which then became the objects of vigorous editorial activity in the course of the fifteenth century. Nonetheless, certain contents of the records were taken from older documents, which scholarly research has repeatedly considered as evidence of a declaration tradition reaching back to the thirteenth or even the twelfth century.⁷⁷ The following analysis of this series of documents in terms of scribal practice will show that real Weistümer emerged comparatively late, as the result of the editorial adaptation of older contents to new requirements. We will first discuss the early developments that led to the appearance of real Weistümer in the lordships of both Romainmôtier and Lausanne. Then we turn to how these records were further edited in the course of the fifteenth century. Finally, using examples from German- and French-speaking regions, we will establish common patterns as well as characteristic variations in the creation of Weistümer.

The Plaict of Apples (1327)

Scarcely any document from the holdings of the priory of Romainmôtier has such marked characteristics of a Weistum as the so-called *Plaict Général* for the village of Apples, above Lake Geneva. The Weistum is dated 1327; however, it is not extant in the original but rather in a copy in a charter from 1355 that marks its new confirmation by the inhabitants of Apples.⁷⁸ That

there was in fact a Weistum created for Apples in 1327 is made plausible by the contemporary local circumstances. Around this time virulent conflicts between the priory and the *maior* of Apples concluded with the latter selling his rights to the cloister. The withdrawal of rights that had previously been conferred on local potentates by the lordship provided the impetus for the recording of Weistümer in other places as well.⁷⁹

According to the extant copy in the charter of 1355, the *probi homines* of Apples first approached their lord, the prior of the cloister of Romainmôtier. The peasants requested their lord to hold a manorial court (*placitum*) once again, as this had once (*olim*) been usual under his predecessors. This phrase suggests that no law had been declared at a manorial court in Apples for a long time. Perhaps for precisely this reason, the subsequent description consistently underscores how strongly the ensuing court assembly was rooted in custom. The prior arranged the manorial court as it had been done since older times, and as it had been done by his predecessors. In front of the prior's house in Apples, "as is the custom" ("ut moris est"), whoever was required to attend according to the old custom assembled, and finally the people declared the law from memory, as it was to be declared according to the old custom. The stipulations they allegedly declared are then presented. These concern lordly jurisdiction, dues, the implementation of the manorial court (*placita*), including legal declarations, further aspects of private and penal law, and the use of farmland and woods.⁸⁰

A good half of these stipulations turn out, on closer examination, to be exact copies or at any rate paraphrases from an old record from 1266 for the village of Romainmôtier itself, which also belonged to the priory.⁸¹ The stipulations were simply reworked for Apples and provided with insertions like the preamble, which evoked the origin of the stipulations from old local legal customs.⁸² The insistence on old customs is exactly what fundamentally separates the *Plaict* of Apples from its model. The Romainmôtier charter of 1266 can in fact be called a Weistum—and an especially early one—inasmuch as it specifies that the stipulations included in it should be promulgated at the manorial court in the future. These stipulations, however, were depicted neither as old nor as conforming with custom. To the contrary, the preamble of the old *Plaict* of Romainmôtier reports serious disputes between the people of the lordship and the priory over several "customs" (*consuetudines*). Finally, an arbitration court brokered a compromise between the two, stating that they must agree on the stipulations to be recorded in what followed. According to contemporary perceptions, this agreement compromised the *consuetudo* character of the disputed regulations, because the parties committed themselves to observe the recorded regulations in the future as explicitly written laws, "as a law and statutes" ("pro jure et legibus").⁸³ Like the Weistümer of the Zürich Grossmünster college of canons already discussed, the *Plaict* of Apples was created by copying regulations from other documents. These templates had described the regulations as outcomes

of a conscious agreement in a particular conflict, while they were newly legitimized in the Weistümer as the contents of an old declaration tradition.

The Plaict of Lausanne (1368)

Another formative process lay behind the *Plaict* of Lausanne, a central document in the constitutional history of that city. Whoever speaks of the *Plaict* refers first and foremost to a charter of 1368. In the fifteenth century, as in modern research, it was already understood as the expression of a much older tradition of regular declarations.⁸⁴ The exact circumstances behind the charter's issuance are very unclear, but doubtless it was related to the conflict at that time between the bishop and the counts of Savoy over the delineation of jurisdiction rights over Lausanne, which lasted for more than a decade.⁸⁵

At the beginning the charter relates how the bishop of Lausanne summoned the people of the city to a manorial court. At the court there were loud complaints about the fact that the enforcement of Lausanne legal customs was constantly marked by irregularities and controversies. In order to provide a remedy, the parties agreed that they would not only declare these legal customs orally, as usual, but also establish them in writing. After this introduction there follow more than 170 regulations on the bishop's jurisdiction and the system of offices, as well as laws regarding the market, trade, building, and dispute resolution. The last eighteen stipulations are introduced by a short notation, according to which they are "*additiones*" that came about only on the occasion of the creation of the records.⁸⁶ This also suggests that the other stipulations were older.

It was doubtless the case that despite its description as a first-time written record, the *Plaict* was at least partially based on older written precedents. Indeed, eleven years before the *Plaict* charter, it was mandated that two new stipulations be included in the book that had been read at the court. The book itself is not extant, but both stipulations can also be found in the *Plaict* charter of 1368.⁸⁷ Other passages match phrasings in the legal records from 1338 for the town of Avenches, then under the control of the bishop.⁸⁸ What is interesting about this compilation procedure is that a thirteenth-century legal record from the cartulary of Lausanne containing at least twenty regulations was incorporated into the beginning of the *Plaict* charter. This is the same cartulary in which Provost Cono had had the laws of Crans, Saint-Prex, and Dommartin—discussed at the beginning of this chapter—entered in the early thirteenth century, which in many regards were still very far from the form of real Weistümer. This is also true for the entry regarding legal relationships in the city of Lausanne under discussion here. In the cartulary, the entry ended with a notation that these are the *recognitiones* that the memorable provost Arducus, after agreement with the clerics, nobles, and citizens of the city of Lausanne, granted to the bishop

Amadeus when he took office in 1144. The *recognitiones* were incorporated into important editions of the nineteenth century, such as the *Monumenta Germaniae Historica*, Migne's *Patrologia Latina*, and Grimm's collection of Weistümer, and listed as records from 1144. The end of this entry lists Arducius's successors as provost, who acknowledged the same stipulations anew to the five bishops who followed Amadeus in the twelfth and early thirteenth centuries.⁸⁹

This precedent, in turn, derives from yet older precedents. Jean-Daniel Morerod has demonstrated on the basis of text-critical and codicological research that the *recognitiones* could not have been created in the twelfth century. They are based on another compilation of different legal notices from the late twelfth and early thirteenth centuries and were created at the earliest in the context of the election of Berthold of Neuchâtel as bishop of Lausanne in 1212.⁹⁰ The stipulations, reflecting legal needs of the moment, were assembled in a cartulary entry, whereby the scribes evoked historical figures such as Arducius, Amadeus, and their official successors, as well as numerous bishops and provosts, to dignify the statements with greater age and approval (*recognitio*). In terms of content the *recognitio* emphasized legal conflicts between the bishop, the chapter, and their stewards among the lay nobility. In contrast to the *Plaict* of 1368, it contained hardly any rules concerning city inhabitants' interactions with one another, and in fact it mentioned the manorial court only incidentally, in the context of lordly authority to adjudicate conflicts over the use of common lands.⁹¹

A connection between the contents of the so-called *recognitiones* of Arducius and the manorial court was first created when the scribe of 1368 copied the entry into the *Plaict* charter after the preamble about the declaration ceremony held at that time, as if these were the first rules that were declared. Here, as in similar cases, one cannot assume that these stipulations contained in older documents had been orally declared from memory in manorial court assemblies and were then on these grounds recorded anew in Weistümer in the fourteenth or fifteenth centuries. This might have resulted in regulations that corresponded in content but not, as these do, in their precise phrasing.

The scribes who copied regulations from the old *recognitiones* into the *Plaict* of 1368 took the liberty of making small, almost unnoticeable omissions and changes.⁹² In addition to omitting the description of the stipulations specifically as *recognitio* provided by the former provost Arducius to the holy bishop Amadeus, they also omitted the list of their respective official successors. They thus erased all reference to the alleged date of the regulations and their origins in the context of conflicts between several lords. Through the copying of the phrases from the cartulary into the new context of the *Plaict* charter, one invented tradition was replaced by the other. In the place of legitimation through the old custom that provosts and bishops recognize one another's reciprocal rights there appeared a new

secular legitimation by which the stipulations had their origin in oral declarations at assemblies of the people that had taken place in all eras.

Commenting and Canonizing: Lausanne

During the fifteenth century the *Plaict* for the city of Lausanne as well as those for the localities under the lordship of the priory of Romainmôtier were not subject to any substantial editorial revisions. Instead they were copied, modified, and annotated. In this, the legitimizing derivation of legal records from oral declarations at the manorial courts became ever more important—while the significance of the manorial courts themselves seems rather doubtful.

A change in the understanding of the Lausanne *Plaict* charter of 1368 is visible in an extensive commentary on the charter, written in the style of contemporary learned glossed texts, which was produced by episcopal officials during the 1430s. It consists of a copy of the charter of 1368 in which each stipulation is supplemented by a gloss.⁹³ The commentators did not make substantial changes to the phrasing of the original. They did, however, eliminate the preamble of the charter, which describes the circumstances of the declaration ceremony of 1368. Instead they placed the stipulations about the implementation of the manorial court closer to the beginning, although it had occurred later in the original. Thus the commentary, too, could describe the annual course of the manorial court assembly at the outset, and provide much more detail than the *Plaict* charter itself.⁹⁴ Whereas the charter ascribed the stipulations of the *Plaict* predominantly to the specific assembly of the *placitum* of 1368, the commentary stressed their origin and justification in a timeless but continual oral tradition.

Around 1500 a translation of the *Plaict* charter of 1368 into the Romance vernacular was prepared. The translator faithfully reproduced the Latin exemplar and also held to the original order of the articles. To facilitate consultation of the text, he included a table of contents (*répertoyre*) that contained a short summary of each article.⁹⁵ In this case, it is the organization of this table of contents that makes it clear that the charter's portrayal as representing an old tradition of declarations at the manorial court had been carried through. As has been mentioned, the beginning of the *Plaict* charter describes more than twenty stipulations taken from the cartulary, which primarily concern the relationship among bishop, chapter, and steward. The index gives this section little weight in that it treats it as a single first article, despite its considerable length. The later stipulations regarding the implementation of the manorial court are numbered 2 through 7, which further suggests that the *Plaict* charter begins with a description of the conduct of the manorial court. The index strengthens this impression further; the summary of the extensive first article begins with, "Regarding

the place where the *Placitum Generale* should be held, and who should be present”—questions that the long section does not in fact answer, not even in a rudimentary way.⁹⁶ Indexing and numbering each have their suggestive power, and in this case they suggest even more vigorously than the commentary that the translated charter recounts a regular declaration at a traditional *placitum*, whose implementation is precisely regulated at the outset.

At this point the question of the actual practice of manorial court assemblies (*placita*) must be settled. While there is no doubt that such assemblies did take place, the available information about their functions and the regularity of their implementation varies dramatically according to both time and place.⁹⁷ A *placitum* of Lausanne is regularly mentioned in cartulary entries and records of the thirteenth and fourteenth centuries, but seems to have been little more than a due date for rents and an occasion for regulating the use of pastures and common lands. This *placitum*, moreover, was sometimes not convened for several years.⁹⁸ Not before a mandate from 1357 does the *placitum* appear as a forum for establishing and passing on an entire series of regulations. The mandate ordered two new stipulations to be entered in the book that was read aloud at the *placitum*. Significantly, the issuer of this mandate was not the *placitum* itself but rather the episcopal *curia secularis*. The latter was a small committee, clearly separated from the manorial court assembly, in which the people of the city were represented by only a few delegates, along with delegates of the nobles and the clerics. It acted regularly in a legislative capacity from the thirteenth to the sixteenth century.⁹⁹

On closer examination, even the *Plaict* charter of 1368 has a dubious relationship to the *placitum*. It is true that, at the outset, it reports a legal declaration and its transcription at one of the regularly held *placita*. In opposition to this, the charter states in a concluding aside that the foregoing stipulations were approved during a regular session of the *curia secularis*.¹⁰⁰ It has been suggested that the information about the authorship of the *curia secularis* does not apply to all the stipulations in the charter but only to the last eighteen, which are designated *additiones*.¹⁰¹ However, even this—like the mandate of 1357—would indicate that, at the time of the recording, the *placitum* was not or was no longer the authoritative institution for the establishment of local legal regulations.¹⁰² While there is one document from 1394 that still mentions the *placitum* as a court,¹⁰³ to date no one has located an unambiguous reference to the holding of a *placitum* in any form in the very rich body of fifteenth-century sources for Lausanne. Only the commentary on the *Plaict* charter created during the 1430s describes the assembly in great detail. However, even this document describes offices that it admits have long since vanished. And one passage in the commentary says in a somewhat nebulous phrase that the assembly had in fact entirely fallen out of practice.¹⁰⁴

At first it seems to be a paradox that the text of the *Plaict* took on its stable form just as its origin in oral declarations was being emphasized. In 1357 the *curia secularis* could still, without much fuss, add two new legal regulations to the book that supposedly was read aloud at the *placitum*. Even in the *Plaict* charter of 1368, eighteen stipulations derived from immediate causes were added to the core material as *additiones*—showing that additions were still possible. During the first third of the fifteenth century, the *curia secularis* even issued a mandate that it said should be recognized as “additions to the statutes of the *Placitum Generale*” (“pro statuto placiti generali addito”). But this stipulation was never included in any of the extant copies of the *Plaict*.¹⁰⁵ Even before the middle of the fifteenth century, the idea must have been in place that the *Plaict* charter could be neither altered nor supplemented. Instead of adaptations, only verbatim copies were made from then on. The more the origin of the *Plaict* charter in assemblies of the people was emphasized, the less it seemed possible to further modify it, be it by those assemblies or by any other authority.

Commenting and Canonizing: Romainmôtier

Similar developments emerge in the lordship of the priory of Romainmôtier. For the village of Romainmôtier itself, the existence of a *placitum* where lordship rights were regularly declared is attested by not only the *Plaict Général* charter of 1266 but also a witness deposition statement recorded three years earlier.¹⁰⁶ For later periods, however, such information is missing. Moreover, there are many records of local legal regulations extant in which there is no mention of a *placitum*.¹⁰⁷ The *Plaict* charter of Apples from 1327 itself states that the declaration of legal regulations with general contents carried out at the manorial court at that time continued a tradition that had been neglected for quite a while. This seems scarcely to have changed later, since local legal relationships were repeatedly confirmed without the participation of a manorial court.¹⁰⁸

For the fifteenth century there are scarcely any details extant concerning the implementation of manorial courts for localities that were subject to the priory of Romainmôtier, as is also the case for the city of Lausanne. Despite this, the old *Plaict* charter for Romainmôtier seems to have commanded a particularly high status even in this period, as the fundamental expression of the local legal order. It, too, became the object of a learned commentary in the 1490s.¹⁰⁹ This commentary was created in the context of the priory's attempts to record in writing the legal customs valid for their lordship territory in a new document that was detailed and uniformly arranged for all of their localities, the so-called *Reconnaissances Générales*. Having the contents of this new record declared orally at manorial court assemblies apparently no longer came into consideration. Instead the representatives of the lordship appeared before the dependents in a series of localities from

1497 to 1499 and requested that they swear to sets of records that were always the same, preassembled in the lordly chancery.¹¹⁰

To justify this course of action, a preamble to the new *Reconnaissances* explained that the established regulations that followed had largely been developed from those of the old *Plaict* charter of 1268 and incidentally also coincided with customs that had not yet been written down but were nonetheless quite old. The commentary on the *Plaict* of Romainmôtier was apparently composed to justify this claim in a more learned form. Its author sought to derive the regulations listed for the first time in the *Reconnaissances* of 1497 from the phrases in the old *Plaict* charter, which he also interpreted in light of other unwritten local legal customs.¹¹¹ Although the lordly administration of the priory ultimately aimed to replace the old *Plaict* charter with the new *Reconnaissances*, the new contents were legitimized in that they were substantially issued as rules for implementing the *Plaict* charter. This is also expressed in the material arrangement of the new records: they were sewn to a copy of the old *Plaict* charter.¹¹²

As in Lausanne, administrative specialists in Romainmôtier during the fifteenth century considered an old Weistum to be the central expression of a local tradition of transmitting laws at manorial court assemblies. And as in Lausanne, they appealed to this apparently old tradition to justify new regulations—although they were wary of continuing the tradition by involving the population in new declarations at manorial court assemblies.

* * *

This chapter has examined the creation and use of Weistümer. Previous research has asked few questions about this topic, because scholars assumed Weistümer emerged almost inevitably from a traditional, barely literate, rural society with small, autonomous political units. At least two facts argue against such conclusions from the outset. First, Weistümer spread only in a period when the use of writing had long since been incorporated into lordship organizations and when most local lordships were being integrated into large territorial power complexes. Second, most holders of lordship completely renounced the adoption of Weistümer. Instead, they had local laws recorded in charters of privileges, records of *recognitiones*, manorial regulations, and arbitration court charters, where they were treated neither as old nor as oral traditions. Such findings require us to understand Weistümer instead as the products of specific intentions for presentation that became increasingly prominent at the end of the Middle Ages.

When one considers Weistümer in conjunction with other types of records, they prove to be one of several expressions of the changing ways in which local law was described beginning in the thirteenth century. With increasing consistency, the very lordship rights that could be projected onto local places or groups of dependents were recorded in separate documents

and justified through particular legal acts. In an early phase, this typically involved the decision of a unique assembly that expressed the assent of numerous individual actors. In contrast, by the end of the late Middle Ages, more *Weistümer* in the strict sense emerged, which based the law not on unique assemblies but on a tradition of legal declarations in regular manorial courts, where a collectivity of dependents (usually described as anonymous) repeated the same regulations year after year. Records from the fifteenth century are also the first to increasingly emphasize the great age of this form of transmitting the law.

The description of local law as an established, old oral tradition had little to do with the traditionality of social conditions. Paradoxically, this vision of the law is more closely connected to forerunners of modern developments, such as the mercantile mobilization of local lordship rights and the formation of large, proto-state power structures which were required to regulate the activities of local officials. In *Weistümer* stipulations could be legitimized as old customs that the people had always recognized without requiring that their assemblies also be granted competence in the present for the establishment of laws. This reflects the increasingly polarized view of local order as a counterpoint between the ruling authority and the people, who were conceived of as a subject collectivity.

In the extant documents from the Zürich Grossmünster college of canons, as well as those of the bishop of Lausanne and the priory of Romainmôtier, there are conspicuous and important similarities, in addition to numerous differences. Among these similarities is the fact that *Weistümer* to a considerable extent did not come into being at manorial courts under the court linden tree but rather on the writing desks of compilers in lordly chancelleries. *Weistümer* were created from the editorial revision of written precedents. These included *Weistümer* for other places as well as exemplars of different types of records that provided contemporary alternatives to the recording and legitimation of local laws in *Weistümer*: agreements between lords, manorial regulations, or arbitration charters. A central motive for the creation of *Weistümer* was the need to bind together regulations of very different origins which were contained in disparate old documents and to place them in a uniform, authoritative context.

Even the wordings reminiscent of oral and folkloric expressions that are found in most *Weistümer* need not be considered the unmediated remnants of an oral transmission of regulations by the dependents. In fact, these can be attributed to operations of compilation, translation, redaction, glossing, and indexing—that is, to notably literate practices—by which the records of laws at the end of the Middle Ages were tied ever more strongly to alleged oral declarations by the people and thus effectively “oralized.” In a few places, the longer ago an assembly had disappeared, the more it was thought to have passed on old local laws unchanged. Such reinterpretations proceeded in a manner that is usually associated not with written culture

but with oral forms of transmission. They promote a homeostatic change that does not often allow ruptures to become obvious. A small omission here and there or even the composition of a new framework around a phrase that in its written stability never needed to be questioned produced radically new contexts of meaning while the records seemed to retain the old ones.

One further operation was first added by historians of the nineteenth and twentieth centuries: that of reading the course of the compilations essentially from back to front. These historians had correctly detected intertextual borrowing between the 1368 *Plaict* of Lausanne and the *recognitiones* of Arducius, apparently dating from the twelfth century, and between the Zürich Weistümer and the old documents in the statute books. But they drew from them the false conclusion that legal declarations in manorial courts had orally passed down unchanging contents for centuries. One of the first scholars to make this assumption was Jacob Grimm.¹¹³

CHAPTER 5

century counterparts edited with great effort. Each record in these books appears in conjunction with other records that are ordered according to chronological or geographical/institutional criteria and reproduced in a strongly standardized form. The formal configuration of these editions suggests that each verbatim transcription of a medieval document forms part of a corpus of contemporary legal writings that were drawn from one another, and therefore are part of a generally coherent legal order. In this way, modern editions of medieval legal sources are reminiscent of modern official law codes. The mere presentation of the documents seduces us into readings that correspond to contemporary administrative, legal, and academic habits.

Yet our reading of medieval legal records in modern editions is far removed from the circumstances in which medieval actors confronted the same phrases. They might have heard one phrase reproduced in the edition as it was read aloud from an awe-inspiring charter, with attached seals; they might have searched for another in the scribbblings of a meter-long scroll, and they might have deciphered a third from a half-faded list. Encountering each of these texts was—much more than for the reader of a modern edition—also an encounter with a tangible object, from which it was inseparable. Contemporaries could not simply overlook their materiality, because, as a rule, written records first had to be retrieved from cases, cabinets, and chests before they could be presented to an audience.

This chapter takes such material conditions as a departure point for a discussion of the culture of using pieces of legal writing. In the following we will discuss exactly how late medieval actors deployed documents in legal and political conflicts and how lordly chancelleries administered and processed them. Of special interest are the practices by which documents were marked as trustworthy, authoritative, and relevant, and how they were (re)arranged in broader conceptual contexts. All this is indicative of particularly late medieval ideas about how texts can represent the political and legal order.

The question of how written texts were dealt with in the Middle Ages was for a long time posed almost solely in the context of investigations into the authenticity of individual charters.⁴ It was the new research on medieval textualization that first posited that such patterns of activity were also significant as components of a past culture. The research on medieval written culture received an important influence from anthropological debates over contemporary sociocultural differences between the West and the partially literate “developing countries.”⁵ According to this theoretical framing of the issue, the spread of writing during the later European Middle Ages was largely conceptualized as a transition from an oral to a literate society, and it was described as a series of developments in or unfolding of the possibilities for application that were intrinsic to writing. According to this line of thought, it seemed natural to explain medieval uses of writing

that seemed foreign from a modern point of view as remnants of a culture that was still stuck in orality.⁶ This approach does have the merit of emphasizing that medieval forms of using writing were fundamentally different from modern ones. But in many respects it aims too low. For Western Europe was not an “oral” culture in the strict sense when local laws began to be written down; nor do descriptions of linear progress in literacy offer satisfactory explanations for the qualitative changes that the use of writing has undergone since the Middle Ages.

In Europe, even in places where knowledge of reading and writing was marginal, Christianity as a book-based religion had since late antiquity imbued writing with a high cultural status and a specific institutional stamp.⁷ Especially during the twelfth and thirteenth centuries, a time when literacy spread rapidly, important innovations in writing techniques occurred in the spheres of liturgy, theology, and scholastic study,⁸ many of which were applied gradually to legal and administrative writing in the subsequent centuries. Such transfers had strong effects on how lay justice systems worked, as has already been shown in [Chapter 1](#) with regard to developments in interrogation procedures.⁹ It is easy to overlook the dynamics in the development of medieval writing culture when practices are categorized by the extent to which they belonged to a “still oral” or an “already literate” stage of civilization.

A series of new studies has called this understanding into question by pointing to the specific institutional and cultural conditions of writing in the Middle Ages.¹⁰ Research on literary production and on literary reading culture, which at first primarily dealt with the early modern period, has recently been extended to the Middle Ages.¹¹ Discussions of topics such as oral recitation or techniques of copying pieces of writing deserve to be applied to legal writing as well.¹² Such findings raise a question that goes beyond those posed about the consequences of using writing at all: How did specific styles of writing usage change the late medieval culture of law and lordship?

This chapter begins with a broad discussion of the ways pieces of legal writing were used and then progressively narrows the focus to the documents that are the subject of this book, namely witness deposition records and *Weistümer*. At the outset we will discuss several examples of the practices by which legal records were invoked and physically presented in disputes. Then we turn to innovations in the lordly chancelleries, focusing particularly on the ways documents were collected and organized for new uses, and the manner in which they were indexed and commented on according to scholastic methods. Such techniques contributed to the gradual implementation of newer and at first rather contested conceptions of how political and legal organizations should be represented and further developed through legal records.

Arguing with Documents

Court records of witness depositions sometimes indicate that even the mere knowledge of the existence of most legal documents was restricted to small circles of people. Usually only the very few witnesses who held higher lordly offices had any knowledge of the charters that were relevant to the legal situation under discussion in a given case.¹³ Even the contents of a charter such as the 1347 *Charte de Franchises* of the town of Payerne,¹⁴ which from a modern point of view seems to be the founding document—practically the constitution—of the city, was not necessarily known in detail to the local population at the beginning of the fifteenth century. In a witness deposition from 1420, Savoyard commissioners examined no fewer than 150 witnesses—including many who had held local offices for years and titled representatives of the regional nobility—regarding a series of local legal conditions that were covered by stipulations in the *Charte de Franchises*. Yet not a single witness referred to this document in his answer.¹⁵

The narrow distribution of knowledge regarding charters that fundamentally defined local law was not primarily due to the fact that rural and small-town people were unfamiliar with written records in general. In witness depositions representatives of the lower nobility and even agricultural producers cited different charters from their private belongings, such as those regarding their purchases of land or loan arrangements.¹⁶ Both these documents and charters such as the *Charte de Franchises* of Payerne, which regulated common local legal orders, were shut away in archival chests and brought into the light of a broader public only on exceptional occasions.

At most, large circles of the population came into contact with important legal documents only on the occasion of an immediate legal or political dispute, when the texts were retrieved from safekeeping and presented before large assemblies. These can be called acts of public display, for the staging of the document as a material object played a prominent role in the occasion. Correspondingly, when memories of legal records were recounted in witness deposition records and other documents, witnesses often detailed more about their material properties than about their textual contents. They scarcely ever attempted to identify documents as belonging to a particular genre (charter, rent roll, Weistum). Instead, many descriptions explicitly state how someone held a document in his hands and displayed it.¹⁷ Furthermore, one repeatedly finds exact information about the physical form of the document, such as that it was a list,¹⁸ a “parchment roll” (“pergamenten rodel”),¹⁹ or a charter, made from two pieces of parchment that were glued together.²⁰ When peasants remembered charters in witness depositions written in German, they often described them with a dual formula as “charter and seal” (“brief und siegel”).²¹ Some also made more specific statements about the color or the image on the seal, such as the

witness from Villingen who said in 1480 that he had “seen and heard how a good parchment document was read, properly provided with a seal, upon which one could see the horse.”²² When trying to figure out the legal meaning of such documents, specialists and *illiterati* alike responded to their material forms. In what follows, two more examples of such acts of public display will be reconstructed in detail and then analyzed to complement the account of the mercenary leader Bernhard Sässeli that was described at the beginning of the chapter.

The Claims of the Rebels

Although the following example concerns not an obscure charter but rather a very prominent one, this document too was publically displayed in a way that differed from Sässeli’s manner more in degree than in principle. In his *Chronicle of the City of Bern*, written around 1420, Conrad Justinger describes an urban revolt in 1362. It was triggered by an allegation that members of the Bern city council had taken bribes.²³ The corruption infuriated many of the citizens all the more because the former mayor (*Schultheiss*), the apparently popular knight Johannes von Bubenberg, had been banned from the city fourteen years earlier on the grounds of the same complaint. A party opposed to the incumbent council argued that if bribery were unavoidable, it would be better to let old Mayor Bubenberg rule again than the new members of the city council. This claim was countered by the legalistic argument that the rebels had no right to lift the ban proclaimed against Bubenberg. At this the rebels demanded to see the city charter, attributed to Emperor Frederick II and the year 1218, to demonstrate that they were allowed to do whatever was in the best interest of the city (“waz uns dünket unser stat nutze und gut sin, daz mügen wir wol tun”). The authenticity of this charter is disputed in modern historiography, but it is firmly established that the artifact achieved its status as the most important record of the local legal order during the second half of the fourteenth century at the latest.²⁴

Under these tense conditions, the city council apparently could not refuse the demand to produce the city law. They summoned a citizens’ assembly in the Dominican church; the city clerk carried the charter through the city to the assembly site. Justinger describes the document as the “golden privilege” (“goldene handvesti”), thus using a synecdoche for the attached golden seal of the emperor. Standing with the charter before the unruly crowd, the city clerk began to search for the stipulation to which the partisans of Bubenberg had appealed. When he could not immediately find it, one of the men assembled—the only one Justinger refers to by name, or more precisely by the not very flattering nickname of “Gnawbone” (*Gnagbein*)—grew angry. He threw a handful of rotten cherries at the charter and thus smudged it. The city clerk hurried to recite a stipulation that the

chronicler does not repeat but describes as the last one in the privilege. “On the strength of this article,” the chronicler says, the crowd went to the house of the mayor, the head of the incumbent council, and demanded that he turn over the city banner to them. Terrified by the angry crowd, the mayor quickly handed the banner through the window, slipped out the back door of his house, and rode out of town, unnoticed. In the meantime, the citizens fetched Johannes von Bubenberg back from exile, elected his son as the new mayor in his honor, and installed a new city council.

Justinger served for a long time as a scribe in the Bern chancellery, and perhaps even produced a German translation of the city charter; he was doubtless extremely well versed in urban conventions for the presentation of legal documents.²⁵ Even if the particulars of his report are not completely beyond question, the way he described the different dimensions of meaning of the “golden privilege” of Bern remains significant. In Justinger’s description, both steps in the authorities’ capitulation to the rebels were marked by protesters taking possession of objects that symbolized their control of the city commune: first the charter of the city law and then the city banner.

The city charter was a complex object and, unlike the banner, could be used to make both symbolic and verbal statements; an individual could carry it, relinquish possession of it to someone else, or damage it, as well as referring to its textual contents. It is anything but clear exactly what the city clerk said when he read aloud. In any case, people seem to have taken almost as many liberties with the charter’s phrasing as Süssli had in presenting his charter to his audiences. The rebels’ allegation that the citizens could do whatever was for the best of the city is at most a distant echo of the actual contents of the charter’s last stipulation. In legally complicated formulas that are scarcely intelligible orally, the charter describes which regulations could be applied or, if necessary, even newly established in the city, aside from those in the charter text.²⁶ Certainly no established reading empowered the commune to revolt against its city council and mayor. The charter was therefore in no way precisely read and interpreted at the assembly in Bern, as would have been appropriate in the procedure of a contemporary court of learned law. Except for the fact that Justinger mentions the existence of a last article, he makes only one reference to the form and content of the charter—namely, that it was provided with an imperial golden seal. This was really all that mattered in his description. The charter appears here primarily as an object, and its display functions as a gesture of appropriation by which the rebels effectively placed their actions under the glittering seal of the emperor.

The Assertions of a Bishop

The second example that complements the Süssli anecdote concerns the

usage of the city law of Lausanne, the *Plaict Général* that was allegedly set down in writing in 1368 before the people of the city assembled at the *placitum* (manorial court), in accordance with the traditional declaration ceremony. In the autumn of 1420, the bishop of the city of Lausanne, on the northern shore of Lake Geneva, altered the local standard of coinage. This act elicited heavy protests from the cathedral chapter and the Lausanne city council. These two groups believed that the bishop could make no change to the local coinage without their consent. Representatives from both sides came together to sort out the conflict. According to a notarial instrument recorded at this meeting, both parties attempted to fortify their positions with pieces of writing they had retrieved from archives.²⁷ The chapter and the city council produced the charter of city law from 1368, the *Plaict Général*, which included a paragraph about the city's and the chapter's rights to be consulted in questions of coinage.²⁸ Astoundingly, however, no one seems to have referred to this passage. Instead the representatives of the city and the chapter spoke at length about the charter as an object, about its external characteristics, from which they deduced that the charter was binding for the bishop: they indicated the seal that an earlier bishop had affixed to the charter and reminded the incumbent bishop that he was dealing with the very charter on which he laid his hand when taking his oath of office.

The bishop's representatives countered with a contract—drawn up perhaps twenty years earlier—between the bishop at the time and the mint master.²⁹ This contract, they said, was recorded by one of the best-known notaries of the day, who was also employed for some time as the bishop's secretary. Moreover, said the bishop's representatives, this contract did not come from the bishop's archive but rather from that of his opponents, the chapter, and even from the chest in which the chapter's most valuable charters were kept. Appealing to this document proved to be a mistake, however. The bishop's opponents asked to have the contract read aloud, and to the great embarrassment of the bishop's party, the phrasing proved the exact opposite of what the bishop's representatives claimed: it recorded how, at the time the contract was drawn up, the bishop had already consulted with the chapter and the city council regarding the question of coinage.³⁰

Had the bishop and his party been bluffing and hoping that their opponents would not ask about the exact phrasing of the contract, or had they simply forgotten to read it closely themselves? Both scenarios are possible and both would point to the same fundamental characteristic of the late medieval use of writing: in political activities, the exact phrasing of documents was seldom paramount, not even in a conflict between the bishop of Lausanne and his canons, many of whom possessed higher education. More important to begin with was the physical presence of a document, the place in which it was stored, and its material characteristics: format, seal, and notarial markings. All these visible characteristics provided points of

departure for narratives about the people who had issued the document—and the acts and rituals for which it had been used previously and through which its authority was strengthened. It is therefore worthwhile to examine this interaction between showing and telling more closely.

Showing and Telling

Although the practices connected with the presentation of pieces of writing prove to be almost endlessly variable, it is possible to discern a few recurring patterns in the examples given here. They indicate that the forms for the public display of documents before assemblies at which legal and political conflicts were played out were institutionalized to a high degree. At this point, we should first discuss three fundamental patterns that recur in the three case studies. These concern, first, the person who conveyed the meaning of a document; second, his behavior; and third, the interpretive processes at which these acts of public display were aimed. Then it will be worthwhile to ask about the possible models for the observed practices.

A first fundamental pattern is visible in the case studies already discussed: documents were most advantageously presented by persons who had access to appropriate authority by dint of their offices and titles, such as the Bern city clerk or the Lausanne notary. Only the mercenary recruiter Süsseli lacked the authorization of an office or an educational credential. However, his behavior can be understood as an attempt to compensate for this deficiency. He devoted large parts of his presentation to convincing his audience of his trustworthiness. The significance of an authorized mediator was bound up with the fact that the presentation of documents had less to do with the simple disclosure of their contents than with communicating an interpretation that was binding.

Second, there are some similarities in the behavior of the mediators. In demonstrating the significance of the documents, they almost always relied on their staging as objects. The most extreme case in this context is the procedure by which Süsseli caused so much excitement in numerous villages: he displayed a charter, the contents of which his audience in fact never learned. The extent to which the mediators became actually involved with the precise wording varied greatly. But in none of the cases was it primarily about a verbatim reading.

A third fundamental pattern concerns how documents were assigned meaning through their display. Here, however, the similarities are hidden behind the great richness of variations that call for more detailed explanations. In the end, the diverse observed interpretations all amount to identifying the textual and material characteristics of the document on display as real traces of specific people and events in the past. Central among these were the seals and notarial markings.³¹ In auxiliary disciplines and in legal history, it has repeatedly been claimed that, in the medieval

understanding, such marks of authentication were perceived as an indispensable—if not the only—prerequisite for the legal authority of documents.³²

Less notice has been taken of the fact that, especially in the case of legal records whose issuers were below the level of emperor and pope, the demonstration of legal power alone was perhaps not very effective. The analogy to modern state legitimation patterns—in which a sovereign invested with far-reaching power distributes instructions to his legal subjects, who are obligated to obey—can at best be applied to the authority of documents that the emperor or pope had issued. In contrast, anyone who raised claims to the relevance of a document that a regional or local powerholder had issued thus brought into play complex questions about the interlinkages between different relationships of lordship and hierarchies within legal corporate bodies. Relationships between entities like a commune and its council or between the bishop, the chapter, and the people could seldom be simply described according to categories of superiors and inferiors. Where such constellations were involved, it was prudent to establish the authority of a document through narratives about very specific activities by concrete personalities and groups that had taken on obligations that continued to be effectual in and relevant to the immediate conflict.

Accordingly, the needs for further elucidations were varied. In the Bern example, the main problem was which of the two parties could actually be seen as the successor to the holder of rights that Emperor Frederick had granted in his charter. On the other hand, the authority of the expression of imperial intention witnessed to by the seal needed no further explanation. It was very different in the case of the seals on the charter that Sässeli displayed. In fact, the only impressive thing about them was that there were seven of them, but without any detailed explanation, his audience would have neither been able to identify these as belonging to important magnates from the precincts of the French crown nor understood how they were involved through their statements of intention. And the bishop sought to boost the Lausanne document on coinage law, provided with only a notarial mark, to a higher authority by relying less on the circumstances of its being written down than on its later use and storage; he made his opponents take note that they, not he, had considered it worth including in their archive and therefore should now respect it. Such justifications for the relevance of a document cannot rely on its textual contents. Rights and obligations were also deduced from practices long after the document's composition when it began to be used as an object.

Models

The extent to which the presentation of legal documents drew on the model of the public display of the Holy Scripture in preaching and mass is a

question that needs to be more thoroughly examined than is possible in this study. But at least a few parallels are conspicuous: the necessity of mediating the *evangelium* through a person empowered to do so³³ corresponded with the significance of the authority of the person who presented the piece of legal writing. Like a priest or preacher, the person in authority was responsible for making a Latin phrase understandable in the vernacular and relevant to present-day activities. In the official's presentation of legal writing, just as in preaching—and in contrast to learned theological debates—this did not strictly require much wrestling with the details of the phrasing. It involved much more the fluid transition between reproducing the phrase exactly and elucidating and commenting on it.

At any rate, the material appearance of the document provided a legitimate entryway into its meaning. The elaborate, artistically decorated Gospel books that lay on the altar during worship or that were used as objects in liturgical acts represented the words and works of Christ.³⁴ And through their materiality, the legal documents recalled secular persons and their statements of intention. At this point, however, the analogy meets its limit. The artistically decorated Gospel book was an expression of a perfect religious order and a repository of statements that required interpretation but whose fundamental authority and relevance stood beyond all doubt. In contrast, the outer characteristics of secular documents and the marks affixed to them referred to changing persons as well as to their changing agreements and intentions, which were afflicted with all the deficiencies of transitory worldly orders and whose authority correspondingly required more extensive justification.

To “all who see or hear this document”—so runs in Latin and in the vernaculars one of the most widespread formulas through which the issuers of charters in the Middle Ages appealed to recipients.³⁵ Modern habits of using writing can mislead us into associating “seeing” in the phrase with reading the text and “hearing” with having it read aloud. Such a juxtaposition can be linked to a social opposition between a writing elite and “the people,” who remain imprisoned in orality. These two groups are often categorized respectively as “already familiar with writing” or “not yet familiar with writing,” as different levels of cultural development.³⁶ In contrast, the foregoing observations show that it must have mattered to literate and illiterate people alike to be able to see a charter as well as hear it—and that they thereby received far more than seeing or hearing a set of phrases. The presentation of a charter in disputes often relied on its public display as an object. In this display, visible signs on the document attested to authentic stories of its creation and use—stories that sometimes were sufficiently well known that they only needed to be hinted at, and sometimes required copious narration. Primarily through such stories, the meaning of the piece of writing for the current conflict was made clear, and many times it was only in association with this, if at all, that a precise

engagement with the phrasing occurred.

From this viewpoint records of local law functioned less as texts than as objects of memory, similar to medieval reliquaries—or modern souvenirs. Souvenirs also typically make pitifully poor media for the preservation and description of memories. But they draw their worth from their promise of serving as a point of contact for the recall of experiences and fictions whose richness and meaning they themselves would never be able to relay. Although the practical use of pieces of writing was in large part focused on their deployment primarily as objects in the context of significant transactions, an opposite concept was also increasingly expressing itself at the end of the fifteenth century, by which documents were also to be evaluated as texts in relation to other significant texts. This understanding of writing will be examined more closely in what follows.

Collecting and Organizing

Once they had been recorded, legal documents were the objects of continual handling, even apart from the scenes of acute conflicts. Above all in the chancelleries of great holders of lordship, pieces of writing were assembled, organized, divided among chests and shelves, included in locating and indexing systems, excerpted and copied, or subjected to precise readings. In conjunction with the indexing of documents, historical research noticed very early on that the administrative practices for legal documents underwent fundamental changes in the course of the Middle Ages.³⁷ Nonetheless, until now hardly any specialized studies on the development and spread of chancellery practices—such as collecting, organizing, reproducing, compiling, and commenting on legal and administrative documents—have been available. The full scope of such changes can best be captured through studies that analyze all the written activities of selected institutions in their context, which cannot be accomplished here.³⁸ Despite this, a few innovations, as far as they are known, will briefly be sketched out here and discussed with a view to their consequences for the use and understanding of records of local law; for at the end of the Middle Ages, emerging forms of administration and the reworking of Weistümer and witness deposition records made it possible to define these new meanings and to make them practicable through administrative techniques that were reinforced by a new understanding of a legal order that rested on custom.

Evaluating Documents

Among specialists in administration, especially in the Savoyard regions of influence, new ways of evaluating legal documents emerged toward the end of the fifteenth century. The model by which the authority of a piece of

writing depended primarily on its physical integrity and the affixed seal became increasingly contested. In an inquiry at the beginning of the 1470s, commissioners of a Savoyard court asked representatives of the nobility, the urban citizenry, and the notaries of the Pays de Vaud which specifications charters in general had to meet to be authoritative according to the regional legal customs.³⁹ An astoundingly high number of those examined, among them titled nobles and two notaries, said that they had never experienced a charter being contested—before a court or anywhere else.⁴⁰ The majority of the witnesses insisted, in spite of critical follow-up questions, that the validity of a charter was to be judged exclusively according to its material form, but not according to criteria regarding its content. Therefore charters were invalid if no authentic seal, or no seal at all, hung from them, or if their script showed signs of scraping and erasing, and in fact—as all who mentioned erasure specified—only if this concerned things such as the date, measurements, or the first and last names of people.⁴¹ On further examination, a few conceded that these days there were notaries who devoted themselves to the subtleties (*se subtiliantes*) of charters, providing them with all possible solemn clauses, although these were entirely irrelevant to the legal validity of the charter.⁴² A notary from the town of Grandson stated how illegitimate he held it to be to call a physically intact charter into question; he said that naturally one *could* oppose such a charter, just as one *could* oppose the Gospel.⁴³

Other witnesses, on further questioning, did not want to deny altogether that, in addition to the integrity of the seal and parchment, there were also other criteria for validity, but only people with specialized knowledge could judge those.⁴⁴ Jean Furno, who earned his living by advising people in court as a *consuetudinarius*, criticized such specialists as well. The *subtilitas* of most advocates, each of whom wanted to be more subtle than the next, caused them to call one charter into question because it was too verbose and another because it was too succinct.⁴⁵ In fact, especially among the examined notaries—that is, the witnesses with the best knowledge of the learned law—the opinion was widespread that the validity of a charter also depended on its conformity to certain formulas. Some reported cases in which courts of the Pays de Vaud had questioned the validity of physically intact charters because they were missing specific clauses like the *stipulatio*, *investitur*, or *devestitur*.⁴⁶

Behind the differences of opinion stood different approaches to the meaning of legal documents. The understanding of those witnesses for whom it depended solely on physical integrity is commensurate with the view that underlay the practice of the ritual presentation of documents before large assemblies. According to this line of thought, the validity of a charter depended solely on whether it could be deployed as an uncontested reference to an act of volition or legal transaction. Some witnesses expressed this quite explicitly when they said that it depended solely on the fact that a

charter expressed the true substance (*vera substancia*) of a legal act and the intention (*intentio*), will (*voluntas*), or mental purpose (*mens*) of the parties that participated in it in a way that could not be misunderstood.⁴⁷ For these witnesses, each charter could be evaluated as a unique object whose only relevant external referent was the legal transaction it attested. In contrast, witnesses for whom the legal power of a document depended also on the clauses used in it understood it in a narrower sense as a text that was to be evaluated in the light of context. For them the meaning and the validity of a charter rested also on its relationship to other charters, whose phrases had to conform with one another and had to be understood in relationship with one another through intertextuality. Statements of this sort are among the numerous indicators of the changing interactions with pieces of legal writing that accelerated at the transition to the early modern period, which will be discussed below. These changes were characterized by increasing attempts to evaluate the meaning of a document in view of other documents.

Chancery Practices

It is scarcely a coincidence that it was the administrative specialists who, in departing from heretofore widespread opinions, found it important to evaluate charters in conjunction with other charters. The common traits of a whole series of practices for the administration of documents that spread in the course of the late Middle Ages are the attempts to set documents in relation to one another, to incorporate them in an overarching organizational system, and increasingly to impute meaning to them in such contexts. The widely applied reorganizations and inventories of the archives of the greater lay lordships—such as those of the Savoyards and the bishop of Lausanne in the 1390s or the urban territorial administrations of German-speaking Switzerland from the middle of the fifteenth century—which were characterized by very systematic procedures, are especially prominent expressions of these developments.⁴⁸

These reforms made pieces of writing more accessible. But through their physical arrangement in set archival divisions as well as the descriptive cataloging of these divisions, the documents also were now situated within a comprehensive organizational system that had perhaps been occasionally called on before but was now fixed. It was common, for example, for documents to be divided according to the rank of their issuers (in descending order of pope, bishops, cloisters, emperor, princes, nobles, etc.). This positioned each item in a hierarchical world order. One alternative organizational system, which arranged documents according to territorial subunits or offices, reflected the classification principles of the administrative apparatus of the late Middle Ages.⁴⁹ In this system documents no longer figured merely as individual references to past acts and their issuers; rather, they also referred to one another and thus to overall systems

of organization.

While an archival organization could assign only a single place to each document in relationship to the others, the practice of collecting and preserving certified and uncertified copies made it possible to arrange documents in several organizational schemes at the same time. In some archives there are an almost unmanageable number of volumes and books extant from before 1500 that collect copies of documents; they thus assemble all the documents that, for example, describe the competences of specific officials, the legal rules that applied to a particular territorial entity, or relationships to neighboring lordships. These activities of copying and compiling were novel in their extent, but they depended on techniques that had been basically known since the twelfth century and had long been used, for example, in cloisters in the production of cartularies.⁵⁰ Nonetheless, the manuscript collections that gained in popularity from the fourteenth century were different in several respects from older cartularies. First, in addition to ecclesiastical institutions, noble and communal holders of lordship increasingly began to copy and compile documents.⁵¹ Second, the older cartularies seem to have drawn their significance precisely from their singularity, from their status as the one book that claimed authority for the entire power complex. In contrast, the same documents in the fifteenth century increasingly appeared in several parallel collections that were no longer designed for a power complex as a whole but rather for one of its officials or territorial units. Finally, the new collections of copies reflect the changes in scribal practice since the thirteenth century. Cartularies of the thirteenth century contained for the most part copies of records, such as charters or agreements about the division of competences between abbots and chapters, which authoritatively regulated legal relationships. In the fifteenth century, in contrast, very extensive acts, such as witness deposition records, were increasingly copied as well. These did not contain binding rules of law but rather material assembled in the process of establishing or applying rules.

Some fundamental innovations in chancery practice can be clearly traced through the example of new forms of collecting and copying witness deposition records. After around 1270, the statements of witnesses were no longer recorded in legally binding charters but rather in simple transcripts of inquiries.⁵² These had a purpose only during a court case; after that, they were legally speaking meaningless and accordingly were seldom preserved. But around 1350 we observe an increase in witness deposition transcripts that were intentionally collected as a way to permanently document rights.⁵³ After 1400 such transcripts increasingly appear to have been reproduced after the fact and copied into copybooks and the books of officials and cities, which documented the heterogeneous legal claims of a lordship.⁵⁴ Thus witness deposition transcripts were often copied without the court decisions to which they had contributed and used alongside contracts and charters as

documentation of valid law. In this way, transcripts that were originally created as supporting materials for court investigations were ripped from the circumstances of their composition and appropriated to document lordship rights that were now portrayed as uncontested.

Beginning around 1500 at the latest, old witness depositions were produced in court as legal evidence. When the communes of St. Saphorin and Les Thioleyres in the Pays de Vaud quarreled over pasture usage rights in the mid-sixteenth century, the advocates for the latter presented to the court, along with a series of charters, a witness deposition transcript that was allegedly produced in 1266.⁵⁵ In fact the transcript contained a copy of a document that, although not dated, cannot have been created before the second half of the fourteenth century.⁵⁶ The original is preserved in fragments that also contain statements in favor of the opposing party—which were prudently not copied in the sixteenth century. It seems that, generally, the earlier witness deposition transcripts were thought to have been generated, the more easily they could be divorced from the contexts of the court case for which they originally had been generated so that they could be introduced into new disputes as evidence for established laws.

Such practices took almost excessive forms in a roll created around 1460 with witness deposition statements that supported the city of Bern's claim to the highest legal authority over the village of Kolliken in Aargau. The roll, all written in the same hand, describes itself in its heading as a copy of a witness deposition transcript from 1419.⁵⁷ For the first six pages, it cannot be ruled out that it reproduces a text from the beginning of the fifteenth century that has since been lost.⁵⁸ The last three pages, however, contain verbatim copies of extant witness deposition transcripts that were not collected in 1419 but rather much later, in 1455 and 1460, in the context of similar legal disputes.⁵⁹ Contemporaries would doubtless have considered most of the possible ways of using the roll to be fraudulent representations of falsified facts, if the nature of its assembly had been brought to their attention.

The general tendency of such types of behavior displays parallels to other contemporary documentary practices. One thinks of *Weistümer*, which were lent the appearance of greater age through new editorial operations.⁶⁰ This development was closely associated with another: around the same time, pieces of writing like witness deposition transcripts and *Weistümer* were increasingly elevated in significance as components of a coherent, commonly held legal order, in that they were incorporated into copybooks or archival organizations and thus set in relation to other pieces of writing. The two developments were linked in that greater age made it easier to impute authority to a legal document in ever wider contexts. The attempt to portray a document as having very old contents could also gradually consign the specifics of the situations in which they were formed to the background.

Putting Usage to the Test

The practices of handling the texts that have been described, which were spread by the chancelleries of large lordships at the end of the Middle Ages, seem to stand in opposition to the interpretive processes by which written texts obtained relevance in conflicts. Chancery practices tended to interpret documents as evidence of established, universally binding legal frameworks by divorcing them from the circumstances of their creation and their previous use. In contrast, the presentation of documents in official procedures often involved associating them with the most specific possible activities of the past, which ideally would bring to light the acceptance of their established contents by one's current opponents. It is worthwhile to examine somewhat more closely how disputing parties overcame this tension in concrete disputes. This will allow us to see how Weistümer and witness depositions could be successfully deployed in contemporary circumstances, under what conditions these were unquestioningly recognized as binding formulations of valid law in ever wider contexts, and how they thereby attained a status that approaches that of a modern law code.

Throughout the period there was also opposition to the chancelleries' practices that divorced the documents from their contexts. Such opposition was experienced firsthand by Jörg Berger, who served as steward (*Vogt*) of Grünigen, a rather far-flung district of the city of Zürich's territory, at the beginning of the sixteenth century. Berger left behind not only a large volume filled with copies of documents that pertained to his office⁶¹ but also letters that record how he went about collecting these materials. Among other things, Berger sought to obtain copies of the Weistümer of all the villages in his district. The peasants in one of the villages, Dürnten, refused to give him their Weistum, which apparently was accessible only in a single draft in their archival chest.⁶² The case was an urgent one, because it was not merely an issue of Berger adding the document to his collection. It had also been requested by Berger's masters, the Zürich city council, which needed it to contend with its competing territorial lords, the Swiss confederate cantons of Glarus and Schwyz. Several letters were sent back and forth, and Berger promised not to change a single letter in the Weistum. At last the peasants offered a compromise: the steward could take the Weistum along to the meeting with Schwyz and Glarus provided that he also took along two men from the village. The village residents seem implicitly to have subscribed to the opinion, still widespread at the end of the Middle Ages, that the authority of a legal record was bound to a specific local context that had to be represented each time it was used. In contrast the steward apparently followed the understanding that also lay at the root of his copybook's creation. By being recorded in writing, local legal customs were established more or less objectively for all time, and on that basis they could

be introduced into any context as documentary evidence.

The conflict in Dürnten is not about peasants who were imprisoned in an oral cultural stage and who therefore put more trust in the spoken word than in a written document. Indeed, given the opportunity, representatives of the central lordship deployed similar arguments. They could, for example, take the stance that they would trust a Weistum only if it had been corroborated by oral statements from the local population.⁶³ That such perceptions gradually changed is shown by another incident. In the fifteenth century courts heard increasing numbers of disputes centering on the question of whether a particular piece of writing authoritatively regulated local legal relationships. The 1430s produced the first known witness deposition in which the witnesses were required to comment on a legal situation not according to custom (in this case, it concerned a boundary line) but rather as to whether it was correctly recorded in an old Weistum.⁶⁴

In 1481 the lords of Hallwil explicitly took a stand that pushed the bounds of trusting a written document still further. They claimed to possess a Weistum in which their customary rights over the small lake near Hallwil were so authoritatively established that no further inquiries in the form of witness examinations were necessary.⁶⁵ The court agreed with the lords of Hallwil to some extent; it examined witnesses not just regarding the legal situation on the lake but also about the validity of the Weistum. The relevant question asked whether the scroll was “of itself lawful” (“an ihm selbst gerecht”). The transcript of this inquiry shows, unsurprisingly, that many local dependents attached less meaning to the Weistum than the lords themselves did, though almost all of them knew of the piece of writing.⁶⁶ One said, “Regarding the scroll, he can say neither yes nor no”; others reported that they had fished in the lake and had followed the regulations, but they cared little about the scroll.⁶⁷ Several witnesses adopted the stance of the lords of Hallwil and described the scroll as “of itself lawful” (“an ihm selbst gerecht”). They all reasoned that someone had read the scroll aloud at one time or another in the manorial court assembly and no one had objected to it.⁶⁸ Despite this, the court did not accept the assertion that legal relationships were authoritatively regulated in the scroll.⁶⁹

The claim that old Weistümer and witness depositions as such reflected generally binding records of valid legal customs is nonetheless reflected in contemporary copied collections as an implicit assumption. It was also occasionally made explicit by representatives of lordships, but an opposing party in a case of conflict by no means had to concede this point. Opponents could counter the pieces of writing produced as evidence by arguing that they were not created or used in circumstances that made them generally binding or recognized.

Apart from papal bulls and royal charters of privileges, only very few records of local laws enjoyed a widely recognized authority that did not have to be newly justified in every individual case and which determined opponents could not easily call into question. Where this was the case, it was the result of the “biography” of a document, or its history of use in diverse circumstances.⁷⁰ While descriptions of arguments appealing to a given document can sometimes give a sense that it enjoyed such a status, the process that led to this status is seldom recoverable. One of the few document biographies that can be traced with reasonable precision will be outlined here: that of the *Plaict Général* of Lausanne, which was created in 1368. More recent historiography has described this charter as the foundation (*pièce maitresse* or *charte fondamentale*) of the medieval legal order of Lausanne. The document first received this special status, as well as the name “le Plaict,” in the fifteenth century. Before that, it was one of several pieces of writing that allegedly recounted the declarations at the Lausanne manorial court assembly (*placita*); until around 1400 these were occasionally rewritten and supplemented. It was only later that the *Plaict* established itself as the authoritative embodiment of the declaration tradition. Subsequently, no further new redactions were produced; instead, rather numerous verbatim copies, a learned commentary, and finally even a French translation were created.⁷¹

In close conjunction with the chancellery practice of enshrining the *Plaict* as an unchanging document, there was a steady intensification and increase in the usage of the *Plaict* in political-legal dealings. From the beginning the *Plaict* had contained stipulations about broad aspects of city life. But the impetus for its recording was apparently a conflict between the bishop and the counts of Savoy over their jurisdiction rights in Lausanne. The document was at first used primarily in this interaction between lords. At the beginning of the fifteenth century, the *Plaict* charter gradually seems to have become associated with more diverse uses. Accordingly, in 1394 the Lausanne ecclesiastical court issued no fewer than five authenticated copies (*vidimus*) of the charter. The court justified this by stating that the *Plaict* charter needed to be displayed (*exhibere*) in as many places as possible, but without the certified copies it could not appear in more than one place at a time. Even so, the original suffered the effects of being constantly transported from place to place, and the seal on the original was exposed to not only careless but also violent mishandling.⁷² The conflict in 1420 over the coinage standard mentioned earlier marks the first occasion on which the representatives of the city population argued against their city lord, the bishop, using a stipulation that was demonstrably included in the *Plaict*. As was shown earlier, elaborate arguments were still required at that time to convince the bishop that this charter was an important legal record that was binding for him as well.⁷³

Already in the 1430s, episcopal officials produced an extensive gloss on

the *Plaict* in which they linked the individual stipulations in the charter with numerous legal customs, the majority of them as yet unwritten, which regulated in detail the administrative and economic everyday life of the city of Lausanne. Laborious explanations of the binding force of the *Plaict* are no longer attested during this period—they were probably no longer needed. From the 1460s the *Plaict* was constantly cited even in the most diverse of conflicts—right up to the 1481 citizens’ protest letter against the episcopal decree stipulating that candles were to be carried when strolling in the evening.⁷⁴

At the same time ever widening circles of people were required to pledge themselves formally to the contents of the *Plaict*. Since 1406 the bishops of Lausanne swore to respect the stipulations of the *Plaict* in their oath of office. Among imperial confirmations of privileges, the charter of Sigismund from 1434 was the first to name the *Plaict* explicitly and to emphasize the great age of many of the stipulations contained within it. The promise to respect the *Plaict* appeared in the oaths of ever more numerous city officials.⁷⁵ After 1482 even the bakers were granted a business license only after they had sworn not only to make “good, well-baked bread” (“bonum panem bene pistum”) but also to obey the “terms of the *Plaict Général*.”⁷⁶

In the course of this development, the *Plaict* was widely cited as a fundamental document of Lausanne law in ever broader episcopal and urban mandates, which thereby themselves received the status of subordinate expansions and regulatory statutes. Thus later records moved the *Plaict* bit by bit to the center of an expanding system of cross-references among Lausanne legal documents. The *Plaict* received an identity-establishing significance as a symbol of the urban order: at the transition to modernity it was even invoked in contexts in which none of its stipulations was relevant. A Lausanne mandate of 1485, for example, stated that prostitutes were restricted to that area of the city that the *Plaict* had designated for them, though the *Plaict* contains no regulation on this subject.⁷⁷

The change in meaning that the *Plaict* charter underwent in the fifteenth century can be described as canonization, according to the definition of Jan Assmann. Through its canonization, a particular record receives high status in ever wider contexts as an authoritative statement that one could no longer alter. Thus it is treated increasingly as a founding document to which other documents refer in order to share in its authority, and it is thus eventually pushed to the center of a coherent corpus of documents.⁷⁸ Assmann developed this concept of canonization with a view to religious documents. Naturally, their use is in many regards different from that of local legal records, yet the movement of the *Plaict* charter into the center of Lausanne legal life followed a formal course analogous to the process of the canonization of religious texts.

That the status of a legal record strongly depended on the history of its use explains to some extent the need to make pieces of writing appear old,

which has already been discussed. Whoever wanted to prevail in a conflict did well to bring a document into the field that would be widely recognized on the grounds of an actual or suggested long history of use in earlier conflicts, essentially on the grounds of its biography. Over time, the *Plaict Général* of Lausanne garnered the same universal claim to validity that, for example, the lords of Hallwil claimed for “their” Weistum, which they described as “of itself lawful”, though without success. While such strongly contested Weistümer were first read aloud and displayed in local courts on various occasions, the *Plaict* of Lausanne had already successfully been introduced regularly as an authoritative record in diverse legal transactions and between very different opponents in the middle of the fifteenth century. The reproduction, indexing, and organizational practices of the chancelleries also contributed to canonization, and these practices were crucial in facilitating the frequent deployment of documents.

In the end a record of local law rose to far-reaching authority primarily by the extent to which its use appeared to be customary—whether because it actually was applied very often or because it was at least suggested by the archaic form. This finding can perhaps place the increasing popularity of arguments based on customary law in a new light. Does it not seem that the trust late medieval chancellery clerks and officials placed in custom as the foundation of law ultimately rested on their experiences not with unwritten regulations but rather with written ones?

Textus and Customary Law

We should not underestimate how significant it was for the development of legal culture that records of local legal customs could achieve an essentially canonical status through the history of their use. Contemporary techniques for cross-referencing and commentary made it possible for ever more written and unwritten legal regulations to share in the authority of a single legal record that was secured through such a history. In this way records with canonical status became the kernels of the legitimation and systematization of extensive local and regional legal orders. One technique that was especially effective and conceptually rich in this respect was the production of a commentary or gloss on a record as a *textus*.

In medieval learned terminology, describing something as a *textus* imputed a particular status to it. A *textus* was seen as authoritatively established and unchangeable, and it was therefore considered appropriate for commentary in learned form through glosses, that is, through expositions linked to particular passages in the text. Until the central Middle Ages, the concept of a *textus* was almost solely applied to the theological exegesis of the Gospels. From the late twelfth century, university scholars began to transfer the term and the commentary techniques to other

documents as well: to the great legal collections of canonical and Roman law and to core classical writings, such as those of Aristotle.⁷⁹ In the region under study, the idea of describing and commenting on individual records of local legal customs as a *textus* can be found in sporadic cases from the fifteenth century onward. This practice remained influenced by its theologically derived premises insofar as it presupposed the canonical status and the irreversibility of the legal records categorized as *textus*. The authority of a *textus*—unlike that of a charter—depended not on the material medium of the writing but rather on a particular phrasing that was set and, precisely because of that, could be duplicated at will.

Weistümer as Textus

In the fifteenth century Weistümer, too, were commented on as *textus*: for example, the records of the *Plaicts-Généraux* for Lausanne and Romainmôtier, which have already been extensively discussed. Indeed, these were individual cases, but in them trendsetting new techniques for constructing legal and political order were expressed.

In spite of the common focus on a *textus*, the commentaries on the *Plaicts* of Lausanne and Romainmôtier are very different texts in their details. The commentary on the *Plaict* of Lausanne from the 1430s relies closely in its form on the model of contemporary learned glossed texts.⁸⁰ In the commentary, each individual stipulation of the *Plaict* charter of 1368 is reproduced verbatim as a *textus* and provided with a commentary (*glossa*) that refers specifically to it. Most glosses are several times longer than the stipulation on which they comment. The work thus occupies a considerable amount of space—in modern printed versions, more than a hundred pages. It was thus most suited for use as a reference work for lordly officials.

The considerably shorter commentary on the *Plaict* of Romainmôtier is much more like a treatise. It discusses the extent to which the dependents of Romainmôtier were to be considered freemen or serfs. This affected not only the dues the peasants owed but also the extent to which they had the right to alienate, lend, or remortgage their goods. The impetus for this treatise was doubtless the preparation of new legal records for Romainmôtier, the *Reconnaissances générales*, during the 1490s.⁸¹ These, as already mentioned,⁸² were to displace the summary *Plaict* charter of 1266 in its function as the central record of local law. In form, however, the new records were structured as subordinate implementation guidelines for the *Plaict* charter. Instead of having the new legal records declared by the dependents at the *Plaict*, the lordship produced a readymade document for a simple oath of obedience. As they assured the dependents, this course of action was justifiable because the new content had largely been derived from the old *Plaict* charter and the remainder corresponded with customs that were old, although they had not been mentioned there.⁸³ This claim was certainly

taken seriously, since the treatise dealt precisely with the derivation of new regulations from the *textus* of the old charter, which was also expanded in light of other local customs that had not yet been established in writing.⁸⁴

The authors of both commentaries were renowned midlevel administrative specialists. The commentary on the *Plaict* of Romainmôtier was signed by the notary Aymon Pollens; the authors of the anonymous commentary on the *Plaict* of Lausanne can be identified from a series of clues as Johannes May and his son of the same name. All three men are attested in innumerable sources and appear there as representatives of a type of administrative specialist who was increasingly common in the fifteenth century. Their careers were characterized by frequent changes of place and a quick succession of diverse jobs as officials, *locum tenens* for officials, and holders of individual mandates in the service of different lords of the region.⁸⁵ Members of this group had very practical interests in developing a coherent system of regulations that was applicable in broad regions and to systematize their rich knowledge of legal customs.

Commentary Techniques

Each commentary that concerns us here assumed the authority of the legal record on which it commented and attempted to raise it to an even higher status. The commentary on the *Plaict Général* of Lausanne, for example, went to much greater lengths than the phrasing of the *Plaict* itself to describe it as the expression of an old tradition of regularly held oral declaration ceremonies at the *placitum*.⁸⁶ In an introductory passage, the author of the treatise on the *Plaict* of Romainmôtier associates it with imperial and papal charters of privileges, from which he derived the general lordship rights of the priory.⁸⁷ Both commentaries treat and describe only their respective *Plaict* records as *textus*. Although both commentaries implicitly reflect a level of juristic knowledge such as that taught at universities,⁸⁸ they contain no explicit references to the collections of canon or Roman law or to the writings of legal scholars. Neither commentary placed its text in conjunction with other prominent texts.

Instead the commentaries assumed that the legal customs established in the *Plaict* records could be interpreted and expounded only from the point of view of other local legal customs. Both commentaries also provided definitions of *consuetudo* and set themselves the task of expounding the stipulations included in the *textus* against the background of still unwritten legal customs, or making it a point of departure for the derivation and justification of additional regulations. To this end they engaged with the *textus* of the *Plaict* or, on a higher level of abstraction, with the “sense of the *textus*” (“sententia textus”) and referred to this or that legal regulation that could be proven “through the *textus*” (“per textum”).⁸⁹ In doing so, the commentators used a series of different processes, which will be briefly

described in what follows.

The commentators explained, updated, and expanded some stipulations by reconstructing how particular legal situations had come into effect through inheritance, loans, or alienation of lordship claims,⁹⁰ or through court decisions.⁹¹ But the majority of the commentary passages do not focus on how laws were changed or made. Instead they assumed the permanence and great age of the legal order. Many stipulations were essentially derived from common sense, popular etymologies, and—apparently—from truisms. Thus one gloss justifies the *Plaict* of Lausanne's stipulation that a man whose house was invaded by a stranger's pigs could kill the creatures on the spot, simply because the pig, unlike other productive livestock, is "a wicked and harmful animal" ("unum turpe et dampnosum animal"). The directive to keep the standard of coinage consistent was explained by the statement that *moneta* (*Münze*, or money) was derived from the Greek *monos* (one).⁹² Such expositions may seem awkward, but they presumably derived their significance not least from their attempt to anchor the regulations in people's everyday knowledge.

Over and over, the commentators insert arguments by extension and analogy. This pattern of argumentation is immediately obvious in the case of the fines levied for the offense of throwing stones at others. According to the commentary on the *Plaict* of Lausanne, the same fine must be paid by anyone who used projectiles that were like stones, including cups, bricks, saltshakers, hand mills for grinding bread, pieces of bread, bones, or parts of bones.⁹³ This process took a more complex form when the commentator from Romainmôtier stated that the *Plaict* mentioned only the dependents' right to sell and pawn the goods they received from the cloister among themselves, while neglecting to mention other important forms of transactions, such as whether they could also barter their goods, rent them for interest, give them as gifts, or burden them with mortgages. To close these gaps in the original record, the commentator discussed each of these latter transactions in view of whether their consequences for the lordship were comparable to those gained through selling or pawning, which were allowed by the text. Through such expansions it was possible to derive astoundingly plentiful and detailed regulations from even the most succinct stipulations of the original text.

By far the most common type of commentary was that in which a single stipulation of the *textus* was set in conjunction with other regulations that could not be derived from it but were allegedly congruent with local custom. The commentators occasionally describe themselves as eyewitness observers of these customs. The commentator for the *Plaict* of Romainmôtier brusquely justified a regulation by stating in the first person, "Thus was the usage and I saw it" ("ita usum fuit et vidi uti").⁹⁴ Similarly the commentator for the Lausanne *Plaict* gives his own account of the *consuetudines* by which weapon-inspections or procedures for the control of urban mills had long

been carried out and were to be carried out in the future.⁹⁵

With remarkable frequency the commentators ultimately content themselves with citing regulations without any further authority other than their provenance as old customs. The commentator from Romainmôtier never tired of identifying specific business procedures as according with regulations; he consistently concluded his descriptions with “this has always been usual” (“ita usus fuit semper”), or “from of old” (“de antiquo”), and “thus it can and should be done” (“sic possunt et solent fieri”). The Lausanne commentary contained other short formulas through which a business procedure was identified as a convention (*mos*), a custom (*consuetudo*), or even as “customary according to custom” (“secundum consuetudinem consuetam”), and thus placed alongside a regulation explicitly stated in the *Plaict*.⁹⁶ The commentators thereby integrated a varied patchwork of normative material derived from historical developments, *ad hoc* agreements, uniquely asserted claims, and the visible routines of officials. The commentaries themselves acknowledged that the regulatory character of many of the customs they described was only recognized among particular groups—perhaps in Lausanne among the winemakers and bakers or in Romainmôtier among the dependents of a certain *ministeriale* of the priory—or even disputed altogether.⁹⁷ But the commentaries almost automatically tended to ascribe to these norms a unified character despite their diverse origins.

On the Way to the Law of the Land

The concept of *textus* does not appear to have been the object of extensive theoretical debate among late medieval scholars;⁹⁸ rather, it went along with assumptions that could be understood as implicit theories of practice. Commenting on a record of local law as a *textus* invited the reader to think of its relationship to other legal customs, just as the Gospels were related to other religious writings. It is significant that neither commentator describes a manorial court assembly at which he had seen an as-yet unwritten legal regulation be declared. Perhaps this was simply due to the fact that such declaration ceremonies had long since ceased by the time the commentaries were produced.⁹⁹ Yet even if the commentators had experienced declaration ceremonies, giving accounts of them would have undermined one of the basic prerequisites for their commentaries, namely that a *textus* represented a declaration tradition whose contents were fixed and authoritative at its *placitum*. In contrast to the growing practice of adjusting legal records to changing circumstances simply by rewriting them, commenting on a document as an unchangeable *textus* lent the work enhanced status. This technique was completely reconcilable with interpreting the document anew in the commentary. Yet in practice the commentators could simply be borrowing the authority of the texts to justify their own views.¹⁰⁰

The status of the *Plaict* records conferred on their contents a primacy that made it possible to subordinate to them the diverse norms which the commentators could inquire about and observe in the present. Indeed, these as-yet unwritten norms appear in the glosses as further details and implementation guidelines for particular sections of the *textus*. In contrast, the diverse circumstances surrounding the records' earlier creation, promotion, and observance moved into the background. Independent of its origins, each norm was set in conjunction with a particular article of the *textus* and in this way incorporated into its system of organization and validity. The regulations included in the commentaries and those in the *textus* of the *Plaict* itself were all essentially based on orally transmitted customs; yet despite the *Plaict*'s primacy, the two types of regulations appeared so similar that they could be combined to produce a legal corpus.

Setting the most disparate kinds of unwritten regulations in conjunction with passages of a *textus* involved a new understanding of unwritten legal culture. The legal culture was now to be organized around a text, and became thus a con-text. Although this context was created from heterogeneous norms, the norms were almost inevitably treated as though they cohered in the same way as a text. As a theory of practice (in Bourdieu's sense—a theory that is implied in practice), this type of commentary proceeds on the implicit assumption that the individual local legal customs formed components of a unified, coherent system: a local customary law. This practice was ultimately a variation on the rapidly spreading procedures for collecting and interlinking norms that also lay behind creating copybooks and urban statute books as well as concurrent attempts to reorganize archives. These commentary techniques were particularly suited to making the conception of a coherent, preexisting regional customary law practicable; in this way, collections of heterogeneous norms received not only coherence but also authority.

The Lausanne commentary in particular occasionally speaks of a *consuetudo Lausanne* (in the singular) as the organizing system for relating the commentary's individual *consuetudines* to the *textus* of the *Plaict*.¹⁰¹ In doing so, the commentary draws on a fundamental process that began to take place hesitantly in the region from the end of the thirteenth century, sometimes called "the unification of custom" (*unification coutumière*).¹⁰² Even though few commentaries that explicitly treat the legal records as *textus* are extant, many nonetheless indicate that the interpretive activities associated with this attitude toward a document spread quickly at the end of the Middle Ages. At that time, in the most disparate of contexts, old legal records that had previously been repeatedly paraphrased were "rediscovered," transcribed in some way that made intensive study possible,¹⁰³ translated, and used as foundations for new legal records.¹⁰⁴ The underlying concept that homogeneous, regional, oral customary laws existed and were accessible through central old texts was seminal. Early modern collection projects—in

which jurists employed by central authorities sought systematically to collect and assemble regional customary laws for specific regions—assumed the methods for interpreting individual legal records as a *textus*. Included among these are the so-called *coutumiers* of western Switzerland.¹⁰⁵ Such collected writings were intended to incorporate legal customs into a legal order whose systematization and detail were modeled on the territorial laws (*Landrechte*) produced by central authorities and whose legitimacy rested on the legislative rights of a territorial authority.

The spread of new conceptions of coherent, regional customary laws directly involved such notaries and administrative specialists as the authors of the *Plaicts* of Lausanne and Romainmôtier commentaries. These officials needed to justify their activities as representatives of changing employers and in changing locales. This was also their incentive to involve themselves with the systematization of local and regional legal regulations. By commenting on a record that retained a high status as *textus*, such officials could incorporate the disparate norms they confronted into an organizational system and ascribe universal validity to them. Like the collection of witness depositions in the fifteenth century, the commentaries on a *textus* assumed that legal regulations could be established independent of any court case—essentially as regional facts that had always been valid. While witness depositions at least assumed that the authoritative establishment of such legal facts required a court procedure, this requirement could be discarded when a legal record was commented on as *textus*. The servants of the lordship who acted as commentators raised themselves to the status of de facto lawgivers.

* * *

The different styles of interacting with legal records that were discussed in this chapter can hardly be understood as stages of development from an “oral” to a “literate” culture. If it must be schematized, it would be better to speak of a continuum: at one pole stood the material aspect of the piece of writing, which was related to forms of public display; at the other pole were the chancellery practices, which were oriented toward content and textual characteristics. The coexistence of very different forms of using writing is typical of the late Middle Ages. Nonetheless, the general trend favored the styles oriented toward the content of the text.

The different styles can be described in more detail in three respects: they were linked with different patterns of argumentation, they emulated different models from the sacred domain, and they featured affinities with different systems of political organization. First, in terms of argumentation, public display was primarily a point of connection for narratives about events that lent meaning to the piece of writing being displayed. In contrast, an orientation toward textual contents was linked more closely with their

classification of regulations in the context of other texts. Second, the public display of pieces of writing relied in part on liturgical interaction with the Gospels. On the other hand, practices for producing commentary on authoritative legal texts rested strongly on the methods of theological exegesis. Third, the public display of documents was tailored to older ways of perceiving political events, since they made it easier to adapt the meaning of a document specifically to changing constellations of different holders of lordship who held power alongside and over one another, as was characteristic of the “feudal” fragmentation of political power. In contrast, new chancery practices aimed to connect statements so as to incorporate them into coherent legal orders that would be uniformly applicable in larger territories. This aim fits with the sweeping claims of lordship that are characteristic of proto-states, in particular of territorial lordships.

In the end, the two styles of usage harnessed different images of the past. The material public display of documents was suited to reports about unique events that were described as precisely as possible and were seldom very far in the past. In contrast, the focus on a universal legal order was associated with a growing interest in a synthesized picture of the “good old days.” In this way, forms of dealing with writing that first found broad dissemination at the end of the period under study were also conducive to decidedly different pictures of a primeval past and its legal culture. The elision of the material characteristics of documents made it easier to understand the legal customs they described as components of a broad, coherent regional customary law that had been passed down unchanged from time immemorial through a folkloric oral legal culture.

The medieval techniques of interpretation that had relied on the materiality of the documents were gradually forgotten. This was scarcely changed by the emergence of the “historical auxiliary disciplines” in the nineteenth century, even though these precipitated a new examination of the material characteristics of the original documents. For here the external characteristics of the documents, which were now understood as “sources,” were of interest primarily in the context of clarifying questions of authenticity, with *discrimen veri ac falsi*. In the end, the historical auxiliary disciplines made it their mission to judge between the different versions, deciding which wording had the claim to be included in authoritative source editions. Such source editions presented the contents of documents completely divorced from any materiality and therefore often capable of being combined with other phrases—that is, as a text in the narrow sense of the word. In contrast, in many medieval practices, materiality was much more than a touchstone for authenticity. It was the point of departure for explanations that imputed meaning to documents in specific conflict situations—especially when that meaning could not be considered a component of a unified, extensive legal order.

Conclusion

In the end there is only one way to approach the late medieval process of writing down laws and its social implications: by examining the documents that the process produced. This book has focused on the records of local laws—primarily Weistümer and witness deposition transcripts—from the area of the present-day Swiss midlands. The study investigated not only the textual contents of these documents but also how they were deployed as objects. This study uncovered the astoundingly dynamic changes in the practices by which unwritten laws were established and implemented ([Chapters 1 and 2](#)), recorded ([Chapters 3 and 4](#)), and utilized after the documents' creation ([Chapter 5](#)). At this point it is worth discussing a few of the main findings of the study against the background of conventional explanations. Subsequently, we will summarize how the use of writing changed over time. The extent to which the results presented here can be applied to other regions of Europe must be studied through further research. The main concern here is to introduce directions for inquiry that could be developed only from a regional example.

Review of Previous Research

Previous research on the understanding of local law in the Middle Ages often took as its starting point a theoretical conception that stressed the differences between “oral” and “literate” societies. This model ultimately reaches back to the nineteenth-century works of Jacob Grimm, although it has also been invoked more recently to explain the cultural differences between the West and the so-called Third World. The late medieval production of written law has thus become a central case study for discussing the implications of literacy.

In the theoretical framework of the comparison between oral and literate societies, the changing understanding of law has often been studied relative to three factors: traditional legal culture, the reception of learned law, and the spread of writing. Widespread scholarly opinion assumes that the perception of local law as old legal custom was a component of a legal culture imprisoned in orality, and adhered to primarily by rural people. The latter—so ran the assumption—equated legal regulations, moral principles, and inherited patterns of behavior, all of which appeared to them as a “good, old law” that could only be discovered, not altered at will. Only as a result of the reception of learned law and the increasing use of writing at the end of the Middle Ages did the old legal understanding give way to the concept

that legal orders could be deliberately arranged and remade. The developments demonstrated in this book cannot be fitted into this model. That is precisely why we need to reassess the three factors used in the traditional narrative of developing conceptions of law.

To what extent did peasant legal culture understand local law as old legal customs? Legal historians have shown that, in documents of the early and central Middle Ages, talk of a “good, old law” is much rarer than in those of the late Middle Ages. One possible explanation for this is that peasant conceptions of law were first preserved in written documents in the course of the late Middle Ages. Nonetheless, even sources like witness deposition records that contain statements from peasant witnesses show that they were not particularly familiar with the concept of a customary law. They were much more strongly focused on norms such as the willingness to compromise; maxims regarding the obligations of personal relationships; respect for agreements that were intentionally negotiated; and a few principles of learned law.

Justifying regulations through custom was characteristic less of everyday peasant conflict resolution than of formalized establishments of law by administrative specialists. Old legal customs were of interest, above all, to officials of the great power complex of the Savoyards, the Swiss confederate cities, and the richly endowed cloisters and bishoprics—the same agents who in other contexts were focused on Roman law or on intentionally established urban statutes. To the extent that it makes any sense to oppose the legal models of a widespread oral folk culture to that of a literate elite culture, the focus on “good, old law” is more typical of the latter.

Another common perception also requires revision: the idea that learned law displaced legal customs. The power complexes studied here incorporated Roman and canon law at different rates. The pioneering role was assumed by chancelleries of ecclesiastical lordships and the noble lordships in the west of the region under examination. The lay administrations of the east followed with some delay. A similar chronology is visible in the conception of local law as old legal customs, which also appeared among ecclesiastical holders of lordship earlier than among lay lords, and earlier in the west than in the east. In some cases elements of the “new” learned law shaped the very legal conceptions that earlier research saw as particularly archaic. Thus the investigative techniques borrowed from Roman-canonical civil procedure worked on the assumption that local rules could not simply be mandated but rather had to be discovered. And it was precisely the attempts to understand unwritten laws by analogy with *jus commune* that caused Savoyard courts to study legal customs as components of systems of customary law. The perception of local laws as old legal customs was in many respects less the point of departure for the reception of learned law than the consequence of it.

Previous scholarship has been reluctant to portray the recording of

customs as an innovation, because it seems to present a dead end in the development of law. From the sixteenth century on, central authorities issued territorial laws on their own initiative and no longer were required to have their contents legitimated as old customs of the people. The developments of the late Middle Ages were perhaps more foundational to this process than is commonly assumed. At any rate, the recording of customs helped to gain acceptance for the concept that the people of a lordship's territory were subject to a unified, nonnegotiable legal order whose handling was largely a matter for legal specialists. It would be worthwhile to study the early modern development of law not only in terms of a break with late medieval practice but also as its further development.

Finally, it is necessary to reconsider the effects writing had on the understanding of local laws. The power complexes in the west of the region under study, in which the use of writing spread especially quickly, showed an earlier tendency to describe local laws as old legal customs. In the west as in the east, this development took shape not at the beginning but rather in the advanced phases of the process of writing down laws. This correlation contradicts the conventional conception according to which the "good, old customary law" was a remnant of an unwritten culture which was gradually displaced by the written records. The conventional model of the process, however, cannot simply be overturned, either. The understanding of local law did not change simply because it was being recorded in writing ever more frequently.

However, there are connections between the changing understanding of law and the spread of specific writing practices. If one takes seriously the fact that writing was already firmly rooted in sacral practices at the beginning of the late Middle Ages in the region under study, the transition to written law and administration in the late Middle Ages was not simply a transition from orality to literacy. Instead, we should assume multifaceted transfers of writing practices from the ecclesiastical and religious spheres into the practice of temporal lordship. Ecclesiastical conceptions of order infiltrated understandings of local law along with such practices.

Altogether, it could be demonstrated that many attitudes that previous research saw as characteristic of an old unwritten legal culture emerged clearly only at the end of the period under study: legal regulations were derived, not less often but more often, from oral traditions; they were increasingly understood as unalterable and as having their origins in progressively earlier times. This trend can be explained by the concurrence of three developments: first, of the institutional framework for negotiating legal regulations; second, of the practices for integrating them into a coherent legal order; and third, of the patterns for justifying them. Each of these developments deserves further discussion.

Between the thirteenth and fifteenth centuries, there was a fundamental change in the institutional framework within which local laws were implemented, negotiated, and recorded in writing. The region under study was characterized by the coexistence of power complexes that were very different from one another but which went through fairly similar developments. During the thirteenth century local legal regulations were primarily administered by local elites, lower noble and ecclesiastical lords, their officials, and leading representatives of their dependents. Later, local lordships were increasingly integrated into extensive territorial power complexes. Higher level courts and chancelleries as well as administrative specialists who had at least a rudimentary knowledge of learned law increasingly intervened in the establishment of laws.

In connection with the expansion and intensification of territorial lordship, it became ever more necessary to define local legal regulations in explicit detail and to record them in writing. The impulse for doing so came not only from large territories but also from smaller lordships—and not only from the centers but also from the periphery of the power complexes. The practice of local lordship rights was increasingly characterized by multitiered systems of officials and their delegates, who themselves numbered among the lordships' dependents. They had a strong incentive to document in writing the lordship rights they used as resources. Written records served such lordship representatives well in conflicts with their peers or superiors; they often brought them before administrative panels and courts at the higher levels of the lordship organization, far from the place where the conflict arose.

The contents of legal records often camouflage the complexity of the administrative organization that produced them. Many depict local organizations as microcosms that rested entirely on interactions between one local lord and the uniform collectivity of his local dependents, while local hierarchies as well as territorial power complexes and their administrative apparatus remain unmentioned. Such depictions are less descriptions of concrete power relations than legal abstractions. Paradoxically, such particularly archaicseeming descriptive elements sometimes conceal provisions that are characteristic of a fairly modern administrative apparatus, namely those of merging different regulative competences and unifying the legal order.

The Construction of a Coherent Legal Order

As territorial power complexes grew, they made increasing attempts to integrate scattered regulations—many of which had applied only to individuals—into comprehensive legal orders that were meant to be universally valid for the people of a smaller or larger region. Even when witness deposition procedures were supposed to investigate only one legal

custom at a time, they increasingly located the examined witnesses in the broader context of an unwritten regional legal order that was imagined to be somewhat systematic. In this context, the Savoyard courts even defined a new category of experts, the *consuetudinarii*. This term referred to people who were familiar not with learned law but with a system of unwritten customs that was increasingly understood by analogy to learned law.

Perhaps the most significant expression of such efforts to integrate regulations is the spread of Weistümer during the fourteenth and fifteenth centuries. This type of document recorded whole series of regulations that were said to have universal validity in a given place and were allegedly declared (*gewiesen*) at the local court assembly on a regular basis. Such descriptions aimed to impute to local law a coherence that it did not previously have; it is clear from other documents that actual legal declaration ceremonies were less about the pronouncement of whole sets of regulations than about the announcement of individual regulations relevant at that moment. Moreover, many of the contents of Weistümer did not originate in oral declarations but rather were compiled in lordly chancelleries from existing documents. The composers of Weistümer stripped the phrases they borrowed of all references to their specific circumstances of origin and authority, formed them into generally valid legal statements, and adapted them uniformly into an oral and popular-seeming form of expression. Thus compiling Weistümer involved assembling heterogeneous regulations into coherent legal orders.

Behind the new forms for using legal records were also increased efforts to set strikingly different norms in relation to one another. Legal regulations in the late Middle Ages were issued by different authorities—cities, cloisters, and nobles—whose relationship to one another was only partially regulated. Thus a detailed explanation was often required to justify why the records that one authority had produced should be binding for others. Such explanations often relied less on the textual contents of the document than on the document's ritual public display as a material object, for in this way relevant circumstances of its creation and previous use could be evoked. In contrast, beginning around 1400, practices spread that deployed documents less as objects attesting to bygone events than as texts to be set in relation to other texts. Texts were integrated with one another in new archival organizational systems and copybooks irrespective of their materiality. Writing commentaries on a Weistum as a *textus* was an especially potent tool for this project. This technique was originally borrowed from theology, where it served to integrate foundational religious writings into a canon. According to this model, the task here was likewise to set legal customs of different origins into relation with one another and to depict them as components of a coherent customary law.

Partially in connection with attempts to associate norms with a coherent legal order, new patterns for laws' justification became prevalent. Previously, clear reports about the specific circumstances of how individual regulations had been agreed on had usually been sufficient to establish their authority. For whole conglomerates of regulations, such arguments were no longer viable. In the course of the period under study, there was increasing acceptance for practices that assumed that the components of legal orders could be neither negotiated nor changed but instead only stated. Laws therefore had to be valid because they had been valid "since time immemorial."

Generally, between the thirteenth and fifteenth centuries, ever more documents appeared that justified regulations through the statements of representatives of the broader population. This "legitimation from below" should not be read as democratization. The process was established instead in the context of a conception wherein laws could not be intentionally created but could be established only through verification. This is evident, for example, in the spread of *Weistümer*. The earliest legal records that can be equated with *Weistümer* from the thirteenth century still described assemblies at which certain named people negotiated and decided regulations at will and according to the needs of the moment. In contrast, regulations in actual *Weistümer* as they spread from the fourteenth century are portrayed as the contents of unchanging oral traditions that representatives of the people had proclaimed from memory at regularly held court assemblies. Thus, in the conception of the *Weistümer*, "created" laws were systematically reinterpreted as merely "discoverable" ones.

New techniques for the conduct and recording of witness depositions promoted an understanding of regulations as unchangeable entities. In the early witness deposition procedures of the thirteenth century, the examined witnesses, who were often elites, agreed among themselves on a valid regulation without needing to justify it any further. In place of such consensusoriented procedures, methods focused on truth-finding appeared beginning around 1300. The witnesses were from then on subjected to rigid individual interrogations. Instead of formulating the regulations being investigated, witnesses—who were now increasingly recruited from the lower social classes—recounted examples of the regulations' everyday observance. These practices reflect an attempt to prove that a regulation was deeply rooted in everyday life and in the consciousness of the people.

These reports were recorded with ever more loving attention to detail, for in evaluating witness depositions the courts also increasingly assumed that they could describe laws more or less objectively. Although the courts had originally had the results of the inquiry read aloud, they transitioned, in the course of the fourteenth century, to intensive reading in which the statements were systematically searched for contradictions. In this context, witness statements were no longer preserved in scrolls, which were

primarily suited for reading aloud, but rather in volumes and books that were provided with elaborate finding aids and facilitated systematic study. Thus new techniques for conducting, recording, and evaluating witness depositions combined to make the law appear as an object of examination rather than negotiation.

From Good, Old Law to the Good Old Days

The records display another common tendency: the later they were created, the greater the age they attributed to the laws. From the end of the fourteenth century, scribes who edited Weistümer inserted archaizing features into the new versions, such as ancient-seeming forms of expression or descriptions of primeval rituals. A little later, comparable contents emerged in witness deposition records. Witness statements cited fantastically old people as sources or included fairytale-like accounts of how a regulation had already been obeyed in a time that was not precisely identifiable but certainly ancient.

Apparently there was an affinity between remembering incidents and formulating abstract norms. This is especially evident in statements regarding incidents from the distant past. Bygone incidents were brought to mind, recounted, and recorded in a very stylized way in witness depositions. This stylization followed conceptions of what was characteristic, ordinary, or usual. Thus descriptions of bygone incidents achieved a degree of abstraction that encouraged the practice of deriving general regulations from them. Above all, late witness deposition transcriptions presented a stylized picture of bygone everyday life in which law and tradition seemed to coalesce: the past evoked by the legal records was already subject to the regulations that were valid in the present. In this ideal world inhabitants made legal customs “visible” because they followed them without exception. In this way the past set itself apart from a present where disorder and disobedience to the law ruled; the law was “no longer lived out,” but rather had to be made explicit and recorded. Such conceptions were at first little more than aids for legitimating legal regulations, but over time they solidified into a full-fledged administrative-legal image of history.

The image of history that lay at the foundation of the administrative documents was not as fully elaborated as that of contemporaneous chronicles, but it still exerts a rarely acknowledged influence on present-day scholarly discussions. Nineteenth-century researchers traced the model of legal development from the Middle Ages to modernity in the legal records of the fifteenth century. The contrast between a law-abiding past and a present in need of regulation could be integrated easily into nineteenth-century historians’ evolutionary conception of history. The vague, distant “once upon a time” that was constructed as a legitimation of norms in the late Middle Ages has been interpreted by scholars since Jacob Grimm’s time as a

concrete historical epoch—somewhere early in the Middle Ages. In this way, the stability that appertains to written content was projected backward, onto the unwritten transmission of law. According to this reading, early medieval legal culture was indeed characterized by unchanging laws that were passed down without being written down, because they were simply reflections of the customs and convictions of the people. This book has challenged this seductive optic by illuminating changes in the use of legal records. For writing practices possess an enormous potential to shape images of order, of the past, and of reality—even the reality of a society that lacked writing.

NOTES

wuchernden Urwald, der ... sich stets verjüngt und in hundert Jahren ein anderer wird, obwohl er von aussen der selbe alte Wald bleibt, wobei das langsame Wachsen auch ein unmerkliches Modern anderer Teile bedingt." See also 29, 39f., 69.

13. Clanchy, "Remembering," 172f.; Clanchy, *Memory*, esp. 296.

14. Goody, *Logic*. Cf. Goody, *Interface*; Goody and Watt, "Consequences."

15. Goody, *Logic*, 127–70.

16. Goody, *Logic*, esp. 130, 163–65.

17. Cf. Goetsch, "Übergang"; Street, "Introduction." For Goody's broad response, see Goody, *Power*.

18. Krause, "Dauer." For an overview of the historiography, see Dilcher, "Rechtsgewohnheit."

19. Wolter, "Consuetudo"; Köbler, "Frührezeption." Customary law thus appears in the formulation of Weitzel as a problem of reception: Weitzel, "Deutsches Recht"; Weitzel, "Schriftlichkeit."

20. As above, note 2.

21. "Le coutumier, c'est bien l'hommage rusé de la coutume à la loi"; Boureau, "Moris," 401.

22. Kroeschell, *Rechtsgeschichte*, 2:85f.

23. Kroeschell, *Rechtsfindung*; Kroeschell, *Rechtsgeschichte*, 2:122–25. Cf. Bonfield, "Nature."

24. Kroeschell, *Rechtsgeschichte*, 2:85f.; Trusen, "Gewohnheitsrecht," Sp. 1426f.

25. Nelson, *Politics*, 62.

26. Kroeschell, *Rechtsgeschichte*, 254f.

27. Prosser, *Rechtsaufzeichnungen*, and many of the contributions in Blickle, "Rechtsquellen." Kroeschell himself barely notes this problem. In a few places in his legal history, he gives no more specific information than a reference to a change in the conception of law, which to some extent comes close to an inversion of the development described by Grimm and Kern. Cf. Kroeschell, *Rechtsgeschichte*, 2:86, 254f.

28. See, e.g., Bermann, *Law*; Anex-Cabanis, "Coutume." In contrast, analogous positions in the research on the early Middle Ages are no longer uncontested; cf. Vollrath, "Herrschaft," and a critical response by Goetz, "Herrschaft."

29. Brunner, *Land*, 111–64, especially 135–45, 240–356, with a reference to Kern, 138. On his reception and impact, see Melton, "Folk," 263–92.

30. Algazi, *Herrengewalt*.

31. For a research overview, see Bourin and Robert, *Vivre*. For a research overview of the region under examination here, cf. Sablonier, "Grundlagenforschung," 195–206; Gilomen, "Sozialgeschichte."

32. For an overview, see H. Keller, "Oral"; Kuchenbuch, "Ecriture"; Mostert, "Approaches."

33. H. Keller, "Vorschrift"; for the declining political development model, see Stock, "Schriftgebrauch." Cf. also the seminal work, Pitz, *Schrift- und Aktenwesen*.

34. See below, notes 78–83.

35. Algazi, "Blick"; Prosser, *Rechtsaufzeichnungen*; Bühler-Reimann, "Ritualisation"; Poudret, "Enquêtes." See also Brunner, *Entstehung*; Brunner, "Zeugenbeweis."

36. Fried, *Schleier*, 173–86; Marchal, "Mémoire"; Tremp-Utz, "Gedächtnis"; Grava, "Mémoire." For the early modern period, see Schulze and Fuchs, *Wahrheit*; Trossbach, "Baur."

37. See some of the recent articles in Mesmer, *Geschichte*, 109–214 and 215–356. More recent general works limit themselves to one of the two linguistic areas or some of their regions: cf., e.g., Achermann, Brülisauer, and Hoppe, *Innerschweiz*; Beer et al., *Berns*; Flüeler and Flüeler-Grauwiler, *Geschichte*, vol. 1; Paravicini Bagliani et al., *Pays romands*; Paravicini Bagliani et al., *Pays de Vaud*.

38. Gilomen, "Verhältnisse," 354–56; Sablonier, "Gesellschaft," 133–233; De Capitani, *Adel*, 16.

39. Coutaz and Morerod, "Documentation"; Sonderegger, "Urkunden."

40. Tremp, "Weg"; Castelnuevo, "Fürstentümer"; Castelnuevo, *Ufficali*, 99–133; Paravicini Bagliani and Poudret, *Maison*; Paravicini Bagliani et al., *Pays de Vaud*; Paravicini Bagliani et al., *Pays romands*.

41. Stercken, "Kleinstadtgenese," 209–49; W. Baum, *Habsburger*.

42. Peyer, "Anfänge."

43. For further bibliography, see Stercken, "Reichsstadt"; Eugster, "Entwicklung."

44. Christ, *Kooperation*; Sablonier, *Adel*; Niederhäuser, *Adel*.

45. Overviews of the territorial administration of many of these power complexes is lacking, but see Morerod, *Genèse*; Morerod, ed., *Romainmôtier*; Ringholz, *Geschichte*; Stouff, *Pouvoir*.

46. Eugster, "Herren"; Morard, "Comtes"; Tribolet, "Comtes," 211–14; Barbey, *Chalon*.

47. Bickel, *Herren*; Siegrist, "Beiträge"; Durrer, "Freiherren."

48. Blicke, "Friede."

49. For precise descriptions of such local relations, see, e.g., Rippmann, "Herrschaftskonflikte"; Hürlimann, *Beziehungen*, 25–64.

50. Andenmatten, "Châtellenies"; Tappy, "Administration"; Eugster, "Entwicklung," 306–33; Hesse, "Expansion," 333–45; Castelnuevo, *Ufficali*, 55–133.

51. For developments in the territories of ecclesiastical lords that are comparable, though they began somewhat earlier, see Morerod, *Genèse*, 371–488; Egloff, *Herr*; Rück, "Registres," 135–86.

52. Sablonier, *Adel*; Castelnuevo, *Ufficali*, 231–341; Castelnuevo, "Société"; Andenmatten, "Noblesse."

53. Kuchenbuch, "Potestas"; Rösener, *Einführung*, 11, 115–23, 137–40; Rösener, *Agrarwirtschaft*, 22–31, 81–87.

54. Castelnuevo, *Ufficali*, esp. 301–9; Eugster, "Herren," 301–6; De Capitani, *Adel*, 29–95.

55. Genicot, *Communities*; Spiess, "Gesellschaft"; Sablonier, "Dorf."

56. Zangger, "Wirtschaft"; Bierbrauer, *Freiheit*.

57. Sablonier, "Gesellschaft," 147–205; Sonderegger, *Entwicklungen*; Zangger, *Grundherrschaft*.

58. Oethenin-Girard, *Lebensweise*; Sablonier, "Gesellschaft," 44–47.

59. Zangger, "Alltagsbeziehungen."

60. Castelnuevo and Guilleré, "Finances"; Hildbrand, *Herrschaft*; Gelting, "Hommes"; Chiaudano, *Finanza*.

61. Poudret, *Coutumes*, 1:205–59; Rück, "Anfänge"; Elsener, *Notare*.

62. Morerod, "Evolution"; Stelling-Michaud, *Université*.

63. For a systematic overview of the adaptability of different systems of norms in French-speaking Switzerland, see Poudret, *Coutumes*, 1:1–112. For the same area of research, see also Huber, *System*, 4:9–99.

64. Poudret, *Coutumes*, 1:65; Morerod and Tappy, "Introduction."

65. Dilcher, "Traditionen."

66. Isenmann, "Gesetzgebung."

67. For an overview, see Huber, *System*, 4:107–74.

68. Poudret, *Coutumes*, 1:19–25, 27–29; Tribolet, "Genèse"; Tribolet, "Franchises et coutumes"; Anex-Cabanis, "Plaict."

69. Poudret, *Coutumes*; Bühler-Reimann, in his study of the Weistümer of the prince-bishopric of Basel ("Gewohnheitsrecht"), pursued not only the legal contents but also the descriptions of legal rituals, and Müller, *Offnungen*, placed the development of the Weistümer of the abbacy of St. Gall in the context of the development of a unified territorial administration.

70. Nonetheless, a few old witness deposition records were included in regional editions of documents, such as FRB 4:129–49 Nr. 117, 5:34–87 Nr. 34, 9:359–71 Nr. 799. Only one volume is available for Pays de Vaud, which reproduced extensive witness deposition records, though they were all produced in the Savoyard courts of the fifteenth century;

71. The earliest of these published collections consisted solely of Weistümer, such as RQZH 1.1–2 (1910). Later the editions followed more broadly defined goals, though they still strongly featured Weistümer; see, e.g., RQZH NF 2.1 (1996); SDVD Vol. B2 (2004); see Largiadèr, “Sammlung.”

72. Rösener, “Dinggenossenschaft”; Gilomen, *Grundherrschaft*.

73. The case study of Poudret is especially to be recommended for the region under study and neighboring areas; Poudret, *Coutumes*, 1:55–67; Poudret, “Les enquêtes de Chalon.” See also below, [Ch. 1](#).

74. Hildbrand has studied aspects of the editorial arrangement of Weistümer by the officials of the cloister of Allerheiligen in Schaffhausen; Hildbrand, *Herrschaft*, 229–49. Gisler, “Mündlichkeit,” has shown how the territorial administration of Bern caused the Weistümer to be renewed and displayed around the middle of the fifteenth century in order to incorporate newly acquired lordships in Aargau into their administrative system.

75. Of the rich literature on this problem I will mention Bisson, *Voices*; Sigurdsson, *Chieftains*; Rippmann, “Herrschaftskonflikte”; Hohkamp, “Herrschaft”; and Sablonier, “Gesellschaft.”

76. Bourdieu, *Entwurf*, 203–28.

77. E.g. Schäfer, *Vokalität*; Bäuml, “Texts.”

78. Thus methodologies that were developed through the study of medieval books and charters can also to some extent be applied to the documents that are under study here. See Gumbert, “Typographie”; Martin and Vezin, *Mise en page*; Rück, “Urkunde.”

79. On the cultural understandings that undergird the creation of administrative documents, see Morsel, “Prélèvement.”

80. E.g. Chartier, *Culture*; Petrucci, *Writers*. For further bibliography, see [Ch. 5](#).

81. Rauschert, “Inszenierung”; Sablonier, “Verschriftlichung”; Sablonier, “Schriftlichkeit.”

82. Groundbreaking observations on this question, primarily for earlier periods, are presented by Kuchenbuch, “Quellen”; Bedos-Rezak, “Identity”; Bedos-Rezak, “Liturgies”; Bedos-Rezak, “Ritual.”

CHAPTER 1

1. Öffnung des Klosters Engelberg für die Höfe im Aargau und Zürichgau (14th–15th c.) StA Engelberg D1. For similar references to hunting hounds and hunting falcons, see (among others), Öffnung Birmensdorf (14th c.) RQZH 1.2:20 Nr. 1; Öffnung Embrach (1518) Weistümer 1:112. For neighboring regions see Rösener, “Dinggenossenschaft,” 71f.; Gilomen, *Grundherrschaft*, 132, 145, 193; Dubled, “Administration,” 441f.

2. For further bibliography, see Schenk, *Zeremoniell*.

3. For such activities, see [Ch. 4](#).

4. For the internal logic of such communication practices, see Algazi, “Tradition”; Ginzburg, “Inquisitor”; Rosaldo, “Door”; Toch, “Asking”; Goody, *Questions*.

5. On terminology, see Werkmüller, *Aufkommen*, 66f.

6. See Introduction.

7. Poudret, *Enquêtes sur la coutume du pays de Vaud*; Poudret, *Coutumes*, 1:52–67; Bühler-Reimann, *Gewohnheit*, 28–54. On antecedent and related procedures, see also H. Brunner, *Entstehung*; and H. Brunner, “Zeugenbeweis.”

8. For further bibliographic information, see Rösener, “Dinggenossenschaft”; Algazi, “Lords”; Spiess, “Einleitung,” 7*–*17. For an interesting comparison, see Weitzel, *Dinggenossenschaft*; Hyams, “Villagers”; Wickham, *Courts*.

9. Examples of this include Urkunde Sigriswil (1236) FRB 2:163 Nr. 151; Urkunde Hüttenmansei bei Interlaken (1239) FRB 2:189 Nr. 180, see Nr. 173; Urkunde Evian (1278) ACV IB 73 Nr. 102; Enquête Chevallaz (1278) ACV IB 55 Nr. 44; Kundschaft Rüeggisberg (1330) FRB 5:772–77 Nr. 730; Kundschaft Zug (1399) UBZG 1:138–40 Nr. 313; Kundschaft

Ringgenberg (1429) StAB Urk. F Interlaken 1429.4.28.

10. E.g., Kundschaft Ringgenberg (1303) FRB 4:129–49 Nr. 117; Kundschaften Hilterfingen (ca. 1312) FRB 5:34–87 Nr. 34; Enquête Estavayer (1337) ACV CIV Nr. 224; Enquête Corsier (1364) ACV C IV Nr. 354; Enquête Fief Blonay (1433) ACV Af Nr. 11; Kundschaft Riedburg (1463) StAB A I Nr. 453a fol. 203r–205r.

11. Especially where there is a suspicion that only fragments are extant, the classification of this type can be uncertain, but it is fairly clear that the following belong to this type: Kundschaft Abtei Erlach (1212) FRB 2:23 Nr. 16; Enquête Dommartin (nach 1275) ACV C Va Nr. 157; Enquête Romand (1277) ACV C Va Nr. 176; Kundschaft Pieterlen (ca. 1373) FRB 9:359–71 Nr. 799, and most of the depositions recorded in the form of sealed documents in the fifteenth century in German-speaking regions (see notes 46–49 in this chapter).

12. See Poudret, “Connaissance,” 523f.; Müller, *Offnungen: Ein Beitrag*, 185.

13. Urkunde Erlach (between 1212 and 1220) FRB 2:23 Nr. 1; Urkunden Vuarrens (1236, extant in a copy) MDR 3.3:107f. Nrs. 68f.; Urkunde Yverdon (1269) AVL Montheron 667, published in excerpted form in Poudret, *Coutumes*, 1:265; Urkunde Payerne (1282) AST Corte 12 pq. 34 (Payerne) Nr. 4.

14. E.g., Urkunde Frienisberg (1238) FRB 2:180 Nr. 170; Urkunde Hüttenmansei bei Interlaken (1239) FRB 2:189f. Nr. 180; Urkunde Rechte Stift Solothurn (1251) SUB 2:34f. Nr. 61; Urkunde Rue (1270) ACV IB 55 Nr. 36; Urkunde Köniz (1293) FRB 3:561f. Nr. 570.

15. E.g., Urkunde Hautcrêt (1226) ACV IB 55 Nr. 19; Urkunde Romainmôtier (1263) MDR 1.3:557–59.

16. Urkunde Siegriswil (1236) FRB 2:163 Nr. 151; Urkunde Lutry (1278) ACV IB 73 Nr. 102.

17. Urkunde Hüttenmansei bei Interlaken (1239) FRB 2:189f. Nr. 180; Urkunde Buchegg (1239) FRB 2:157 Nr. 143; Urkunde Aigle (1290) SDVD Vol. B2:25 Nr. 34; Urkunde Payerne (1282) AST Corte 12 pq. 34 (Payerne) Nr. 4.

18. The result of such an inquiry—of the city of Bern’s council members—has been recorded: Urkunde Köniz (1293) FRB 3:561 Nr. 570. Their investigation, which at that time was already a decade old, is described in Kundschaft Ringgenberg (1303) FRB 4:140 Nr. 117 (Hainricus dictus z’Ustro). See, however, p. 143, the statement of Conradus dictus Brenner, who spoke of only four witnesses.

19. Urkunde Trub (1266) FRB 3 (appendix), p. 768 Nr. 14: “Tandem cum ex obscuritate probationum utriusque productarum nobis non immerito ambiguitas orietur, secundam formam in compromisso sic duximus statutendum...”

20. “[I]n quo major pars concordaret”; Urkunde Vuarrens (1236) MDR 3.3:107f. Nrs. 68f.

21. Nelson, *Politics*, 62; see Kroeschell, “Rechtsfindung,” 511–13; Kroeschell, *Rechtsgeschichte*, 84–86, 122–25. Compare the formulation by Weitzel, “Deutsches Recht”, 780: “There was no claim to legal validity that precluded debate” (“Es gibt keinen trotz des Streitens fortbestehenden Normgeltungsanspruch”).

22. This is especially evident in Urkunde Siegriswil (1236) FRB 2:157 Nr. 143; Urkunde Hüttenmansei bei Interlaken (1239) FRB 2:189 Nr. 180, c.f. Nr. 173; Urkunde Yverdon (1282) AVL Montheron 666.

23. Urkunde Siegriswil (1236) FRB 2:163 Nr. 151.

24. Urkunde Romainmôtier (1263) MDR 1.3:557–59. See Urkunde Hüttenmansei bei Interlaken (1239) FRB 2:189 Nr. 180: approximately eight witnesses without titles and two knights; Urkunde Hautcrêt (1270) ACV IB 55 Nr. 36: of six witnesses, one was a *domicellus* and another was related to him on his father’s side, although he was still too young to claim a title.

25. E.g., Enquête Romand (1277) ACV C Va Nr. 176: of six witnesses, one priest and one monk; Urkunde Evian (1278) ACV IB 73 Nr. 102: of seven witnesses, two monks, two chaplains, and a regular canon; Urkunde Chevallaz (1278) ACV IB 55 Nr. 44: of thirteen witnesses, two monks; Urkunde Köniz (1293) FRB 3:561 Nr. 570: of seven witnesses, one priest.

26. Kundschaft Morges (1296) SDVD Vol. B2:120f. Nr. 107.

27. Kundschaft Ringgenberg (1303) FRB 4:129–49 Nr. 117. At the beginning of the document, the four questions were separated from one another only by the word “item”; the answers were divided into sections by numbers.

28. Here the *articuli* were posed twice—once by themselves and then in practically identical form but along with the objections the opposing party raised against them: Kundschaft Hilterfingen (ca. 1312) FRB 5:36, 37–41.

29. Enquête Grenet (1396) ACV C IV Nr. 436.

30. Enquête Grenet (1396) ACV C IV Nr. 436 fol. 4r (Borcardus Rocual), 5r (Perrodus Bischollet), 5vf. (Cunradus Fiaz and Perrodus Mellin).

31. Enquête Grenet (1396) ACV C IV Nr. 436 fol. 6r (Cuanetus de Praela).

32. Enquête Grenet (1396) ACV C IV Nr. 436 fol. 6v (Heltmandus de Visi, Conradus de Melduno).

33. On these reports and their development over time, see [Ch. 3](#).

34. Enquête Fief Blonay (1433) ACV Af 11 fol. 106rf.: “sunt circa quator viginti anni lapsi a villagio de Brent ivit ad villagium de Terriez parochie de Blonay versus quondam eius soror vocatam Mermet.... Et ibidem vidit quod dictus custos excolavit de una rella vindemne clarum seu unam partem clari grellate vindemne. Et tunc ipse testis interrogavit dictam Mermetam, quia quia [sic] idem testis erat bene iuvenis, qua re ... excolebat clarum ac etiam interrogavit maritum dicte sue sororis. Quiquidem ambo dixerunt sibi teste loquenti quod erat pro garda que debebatur domino castri de Blonay” (Cappelanus Jordanus).

35. See Lepsius, *Zweifeln*, 57. Clearly, proceedings that were pursued with a view to the procedures of church courts focused on the number forty and examined between thirty-eight and forty witnesses per party; see, e.g., Kundschaft Ringgenberg (1303) FRB 4:129–49 Nr. 117; Kundschaften Hilterfingen (ca. 1312) FRB 5:65–78, 79–86 Nr. 34. A few examples of the number of witnesses examined in other depositions include Enquête Morges (1296) SDVD Vol. B2:120–25 Nr. 107: 14 witnesses; Moudon (1305) ACV C II Nr. 33: 23 witnesses (the recording of 19 witnesses in the partial edition is not correct; c.f. SDVD Vol. B2:138 Nr. 118); Rüeggisberg (ca. 1335) FRB 5:772–77 Nr. 730: 25 witnesses per party; Schwamendingen (1344) StAZ C I Nr. 2996: 19 witnesses; Pieterlen (1373) FRB 9:359–71 Nr. 799: 117 witnesses. However, examinations also were conducted of between ten and twenty witnesses, and there were isolated cases with fewer than ten witnesses. See, e.g., Enquête Oron (1360) ACV IB 56 Nr. 71; Kundschaft Bursins (1374) ACV C VIIa Nr. 404.

36. See [Ch. 2](#).

37. There is a priest to be found among the witnesses in the following records: Enquête Corsier (1364) ACV C IV Nr. 354; Enquête Erlach (1403) AST 12 pq. 9 (Cerlier) Nr. 5. Far more common and extensive are the records in which witnesses were no longer listed with a title, e.g., Kundschaft Schwamendingen (1344) StAZ C I Nr. 2996; Kundschaft Oron (1360) ACV IB 56 Nr. 71; Kundschaft Pieterlen (1373) FRB 9:359–71 Nr. 799; Kundschaft Amsoldingen (1389) FRB 10:522–527 Nr. 107.

38. See [Ch. 2](#).

39. The inquiry at Morges was carried out by the free noble law professor Nicholas de Saint-Germain, Enquête Morges (1296) SDVD Vol. B2:120 Nr. 107. In the conflict over the use of the forest at Ringgenberg, the local lord pled his case with the help of an *advocatus* of the Constance Curia court, Magister Heinrich von Rüttlingen; Kundschaft Ringgenberg (1303) FRB 4:149 Nr. 118. In the conflict over the church in Hilterfingen, a leading contemporary jurist in the northern foothills of the Alps—Conrad Pfefferhard, to whom the cloister of Interlaken had given the parish of Hilterfingen as a benefice—was himself a party. He had studied in Bologna, was provost of the canon chapter of St. Johann in Constance, and was an important collector of legal manuscripts; Gmür, “Zivilprozesse,” 299, 303, 313, and Stelling-Michaud, *Université*, 58, 70, 84, 111, 225.

40. For further bibliographic information, see Lepsius, *Zweifeln*, 3–24; Litewski, *Zivilprozess*, 2:379–419; Gilomen, *Rotamanualien*, xv–xvii; Stelling-Michaud, *Université*; Caenegem, *History*, 11–23. For an example of such a process in the region under study, see

Junod, *Enquête*.

41. Lepsius, *Zweifeln*, 87–96.

42. See *Enquête Estavayer* (1337) ACV C IV Nr. 224.

43. Schunka, “Visualisierung.”

44. Maurer, “Gedächtnis,” 185.

45. On this problem, see Weitzel, “Wege.”

46. Partially published in RQAG 1.2/2:5–7. The witness deposition concerning the boundary between the Eigenamt area of Aargau and the city of Brugg is recorded in a similar form and partially published in RQAG 2.2/1:34–37. It consists of a series of court records from a small area containing the villages of Villmergen, Lenzburg, Säkingen, and Birmensdorf.

47. StAB Urkunden F Interlaken 1478.10.30 and 31.

48. StAB Urkunden F Interlaken 1478.10.28 (two pieces, written at the court of “Gsteig”—present-day Gsteigwiler bei Wilderswil—the location of the lord’s court).

49. StAB Urkunden F Interlaken 1478.10.28. Cf. Urkunden Brugg (1480) RQAG 2.2:29.

50. See “Introduction,” note 64.

51. Poudret, *Coutumes*, 1:407f.

52. *Enquête d’Aubonne* (1437) SDVD Vol. A1:43 (Petrus Amine), see p. 53 (Iohannes Got), 73 (Jacquetus de Montrichier). See further examples in Poudret, *Coutumes*, 1:61.

53. Unlike most Savoyard witness deposition records of this period, this record lists the personal information of the witnesses only intermittently, which further indicates its experimental character. Most of the interrogated witnesses can be identified on the grounds of their mention in other sources. Among them, from Moudon: Mermet d’Etoy and Pierre Arma (Arme), c.f. ACV Af 11 fol. 174v and SDVB Vol. A1:326; from Vevey: Johanes Got, c.f. ACV Af 11 fol. 81v (1433), SDVD Vol. A1:51 (1437), ACV IB 148 Nr. 263 Bl. 8 (1337), and Pierre Tornier according to ACV Af 11 fol. 51r (1433); from Lutry: Guido Crossserens, c.f. ACV Af 11 fol. 109v (1433), ACV C IV Nr. 460 fol. 6r (1446), and Michod de Crossserens, see ACV Af 11 fol. 159–67 (1433).

54. *Enquête de Thonon* (1430) AST Corte 12 pq. 4 Nr. 3. Based on a newer copy in the ACV, partially published in SDVD Vol. A1:3–16. The court case is one of a decadeslong series of conflicts between the Savoyards and the bishop over their respective legal rights in the city which was not important to the case itself; instead, only the details of the procedures for appealing decisions were under debate. See Raymond, “Avoué.”

55. Guido Crossserens (see ACV Af 11 fol. 109v [1433]), who was later the *locum tenens* of the episcopal bailli of Lausanne (see ACV C IV Nr. 460 fol. 6r [1446]), as well as Michod Crossrens (see ACV Af 11 fol. 159–67 [1433]), and Iohannes Got (see SDVD Vol. A1:51 [1437]). Pierre Tornier was titled *domicellus* in ACV IB 148 Nr. 263 Bl. 6 (1437, Vidimus of 1467) and Iacobus de Glana was described as *nobilis* elsewhere (see SDVD Vol. A1:135 [1439]).

56. See *Enquête d’Aubonne* (1437) SDVD Vol. A1:28–80, with mentions of Iohannes Got (41), Udriod Ysabelle (41, 45, 53, 67), Pierre Tornier (41, 45), Mermet d’Etoy (53, 63), and Iacobus de Glana as counselors in previous court cases (41, 45, 53, 67, 77).

57. *Enquête de Thonon* (1430) SDVD Vol. A1:13: “iste punctus decidi, declarari vel determinari non potest nec debet secundum dictam consuetudinem, donec auditis prius partibus et eorum iuribus et allegacionibus allegandis tempore et loco opportunis” (group of five witnesses).

58. *Enquête Fief Blonay* (1433) ACV Af Nr. 11 fol. 1v: “articuli ad probandum admissi 12 dies martii” Nrs. 5–14; *Enquête de Chalon* (1470/71) SDVD Vol. A1:308: “articuli quinto loco traditi,” Nr. 3; *Enquête Blonay* (1437) SDVD Vol. A1:87 Art. Nr. 10.

59. *Enquête de Gruyère* (1439) SDVD Vol. A1:107 Art. Nrs. 1–2; *Enquête de Chalon* (1470/71) SDVD Vol. A1:308 Art. V.3.

60. *Enquête de Chalon* (1470/71) SDVD Vol. A1:167–72 (Art. I.14–20), 173f. (Art. III.2), 175f. (Art. IV.2); *Enquête Blonay* (1437) SDVD Vol. A1:87 Art. Nr. 10; for a complete list of

questions, see the original, ACV IB 148 Nr. 263.

61. E.g., Enquête Blonay (1437) SDVD Vol. A1:90 “ipseque testis ... sic cognosceret et iudicaret si sibi in iudicio foret petitum” (Jean Pitet); see 91 (Jean Cagny and Pierre d’Aubonne), 93 (Michel Martigniez), 95 (Antoine Aubert), 96 (Jean Got), 97 (Antoine Bonjour); Enquête de Chalon (1470/71) SDVD Vol. A1:230 (Jacques Praz), 233 (François de Billens), 234, 236f., 238f. (Jaquet Amedei), 241 (Jacques Bise), 246 (name not extant), 247 (Richard Rossel).

62. Especially insistent questioning is contained in Enquête Fief Blonay (1433) ACV Af Nr. 11, e.g., fol. 133r–34r (examination of Johannes de May). For two witness depositions, instructions for such questioning are extant: Enquête de Gruyère (1439) and Enquêtes de Chalon (1470/71) SDVD Vol. A1:141, 179–88, 311–14, and as an example, 184: “et si [the witnesses] dicant quod viderunt iudicari et fieri contra ipsam regulam, interrogentur in quibus casibus et quod ipse casus speciffice et ad longum declarent, et quot vicibus et quo tempore, de anno scilicet mense et die et in quo loco et de loco loci et pro quibus rebus et inter quas personas et per quos, et an ipsi casus fuerint positi in disceptacione inter consuetudinarios [...] et inter quos consuetudinarios, et an ipsi fuerunt decisi et per quod fuerunt decisi, et quo tempore, de anno scilicet mense et die, et in quo loco et de loco loci.”

63. Especially marked examples of such division appear in Enquête Fief Blonay (1433) ACV Af Nr. 11; Enquête Blonay (1437) ACV IB 148 Nr. 263; Enquêtes de Chalon (1470/71) SDVD Vol. A1:159–521.

64. Enquête Blonay ACV (1437) IB 148 Nr. 263 Membrane 1–6, the first 28 witnesses.

65. Enquête Blonay ACV (1437) IB 148 Nr. 263 Membrane 7–9; only this portion of the witness deposition record has been published in SDVD Vol. A1:87–97.

66. On the formation of the concept of the existence of a unified “Land,” a “*patria Vuaudi*,” and a corresponding population, propagated through the recording of laws, see Ciardo and Morerod, “Patrie.”

67. Morerod and Tappy, “Introduction”; Poudret, *Coutumes*, 1:129f., with further bibliography.

68. For an especially elaborate example, see Enquêtes de Chalon (1470/71) SDVD Vol. A1:179–88, 311–14, and (for an unpublished portion) ACV Af 5 Nr. 2 fol. 8.

69. Enquêtes de Chalon (1470/71) SDVD Vol. A1:181.

70. Enquête Fief Blonay (1433) ACV Af Nr. 11 fol. 18r and 59–193, in each case through Art. 18; Enquête d’Aubonne (1437) SDVD Vol. A1:28–80, in each case through Art. 7; Enquête de Gruyère (1437) SDVD Vol. A1:141; Enquêtes de Chalon (1470/71) SDVD Vol. A1:188, 314.

71. Enquête Fief Blonay (1433) ACV Af Nr. 11 fol. 26r–192v through Art. 6 of the series recorded March 12; Enquête de Gruyère (1439) SDVD Vol. A1:115–39 in each case through Art. 3; Enquêtes de Chalon (1470/71) SDVD Vol. A1:223 (Jacques Praz).

72. Nonetheless, the commissioners sometimes asked the witnesses whether the *consuetudo* of Vaud was mainly applicable in their place of residence. This brought into consideration the possibility that specific localities—such as the enclaves of territories under the lordship of the bishop of Lausanne that lay in Savoyard territory, or cities that were under their own city law—did not belong to the area of the Pays de Vaud’s legal customs but rather were under their own laws, which nonetheless were understood as spatially defined legal systems. Enquête Fief Blonay (1433) ACV Af Nr. 11 fol. 168r–169v (Johannes Seraceni); Enquêtes de Chalon (1470/71) SDVD Vol. A1:248 (Henri Chastel), 267 (Jean Criblet), 316, 331 (Barthélémy de Saint-Martin), 482 (Nycod Thomas), 483 (Pierre Morroni), 513 (Girard de Moudon), 515 (Anselme Griset), 518 (Jacques Banquetaz).

73. Gallone, *Organisation*, 24–43, esp. 24f.

74. See above, nn. 28 and 29.

75. Enquêtes de Chalon (1470/71) SDVD Vol. A1:188, 314.

76. Poudret, *Coutumes*, 1:60–64, 259. Such word usage appears in Enquête Thonon (1430) SDVD Vol. A1:9; Enquête Blonay (1437) SDVD Vol. A1:93.

77. Enquêtes de Chalon (1470/71) SDVD Vol. A1:131 (Nycod Luyset), 138 (Antoine Guilly), 211, 437 (Nycod Escoffier), 289 (Pernet Aymotaz), 418f. (Guido Pittet).

78. Enquêtes de Chalon (1470/71) SDVD Vol. A1:414 (Jean de Montrichier), cf. 212, 220, 447 (Jean Mistral), 220, 232 (Jacques Praz), 235 (Jaquet Amedie), 251, 261 (Pierre Aymonet), 261, 270, 502 (Jean Criblet), 374 (Pierre Bovet), 449 (Louis Cerjat), 464 (Claude de la Cour).

79. Enquêtes de Chalon (1470/71) SDVD Vol. A1:234 (François de Billens), 428 (Etienne Montherod), 481 (Aymonet Pittet), 488, 490 (Pierre de Mont).

80. Enquêtes de Chalon (1470/71) SDVD Vol. A1:352 (Pierre Martignier).

81. Enquêtes de Chalon (1470/71) SDVD Vol. A1:278 (Jean Vilberti). Others situated themselves in diverse subcategories, in that they sometimes stated that they could read and write a bit of French and understand Latin, or speak Latin but not write it: p. 203 (Guy Ceriat), 228 (Etienne Montherod), 433 (Etienne Favre).

82. Enquêtes de Chalon (1470/71) SDVD Vol. A1:325f.

83. Enquêtes de Chalon (1470/71) SDVD Vol. A1:320 “Interrogatus quis appellatur possessor de consuetudine et quis quasi possessor et si sint iura, ipsorum iurium quasi possessor, dicit quod quoad iura consuetudinarii grosso latino non faciunt differenciam de iuribus nec de quasi possessione ad possessionem; ymo totum vocant possessionem et nunquam consueverunt ipsi consuetudinarii dicere nec si nec quasi nec istas condiciones sutiles, sed vulgare [sic: vulgari] modo versantur et lingua et vestibus et moribus ... quoniam sunt multi in patria Vaudi grosso modo vestiti qui sunt peritissimi.” A similar statement is found on p. 360 (Pierre Martignier).

84. See Ch. 3.

85. For an overview of descriptions of such rituals from German-speaking regions, see Grimm, *Rechtsalterthümer*, 2:507f.

86. Extentes Faoug (1396) SDVD Vol. B1:608 Nr. 365 §7; Plaid Vautravers (1302) Glaenzer, *Plaid*, 46 § 4; Öffnung Holderbank (1470) RQAG 2.1:659; for other examples, see Grimm, *Rechtsalterthümer*, 2:509.

87. Examples of more recent works include Algazi, “Blick”; Algazi, “Lords”; Holenstein, *Huldigung*, 147–216; and many of the articles in Blickle, *Rechtsquellen*. Morsel has problematized these perspectives: Morsel, “Prélèvement,” 171–78; Eder, *Weistümer*.

88. Prosser analyzes Weistum transmission especially strongly in this respect: Prosser, *Rechtsaufzeichnungen*. In contrast, Gilomen has suggested discontinuities in the practice of legal declarations: Gilomen, *Grundherrschaft*, 131f.

89. Examples from recent research include Toch, *Asking*; Algazi, “Blick.” In contrast, others have suggested that the development process of Weistümer is only loosely connected with oral legal declarations: Hildbrand, *Herrschaft*, 229–48; Teuscher, “Kompilation.”

90. Algazi, “Blick.”

91. E.g., Plaid Général Pully (1368) SDVD B1:615 § 18: “quilibet principalis persona tenens focum seu larem”; see Spiess, “Einleitung,” 10; Simon, *Grundherrschaft*, 75–90; Bader, *Dorfgenossenschaft*, 90–102.

92. Öffnung Obernhusen und Stettbach (1393) StAZ C II Nr. 432a; Öffnung Albrisrieden (15 Jh.) StAZ G I Nr. 103 fol. 25v; Öffnung Meilen StAZ G 102 fol. 11r; Öffnung Unter-Dürnten (1480) RQZH 1.2:488 Nr. 3; Plaid Vautravers (1302) Glaenzer, *Plaid*, 46: “Ouqué plat deivent segre cil qui tienent les terre Sem-Pierre oudit Vaul, qul que il soit, pourquoy il en tienet tant que on i puisse semer rase emine de chenevaz.”

93. The presence of widows is prescribed at the manorial court in the Öffnung of Adlikon near Regensdorf (mid-fourteenth century), RQZH 1.1:7 Nr. 1, and mentioned in Urkunde Weissenburg (1477) RQBE 2.1/2:53f. Nr. 23.

94. Court records sometimes list the people who took part in the manorial court by name, and even for large places, these include at most around ten names. For example, see Öffnung Holderbank (1470) RQAG 2.1:657f.; Öffnung Breite (1439) RQZH 1.2:141f. Nr. 3.

95. Öffnung Holderbank (1470) RQAG 2.1:657–64. Hans-Jörg Gilomen observed similar relationships for the court of Gutzwiler, which belonged to holdings of the Basel cloister of

St. Alban; he explains convincingly in this case that the local population adjusted their places of residence according to the results of wars: Gilomen, *Grundherrschaft*, 163.

96. Eintrag Albrisrieden (14th c.) Statutenbücher, 157: “villani, qui colunt possessiones civium, nunciare debent dominis suis, ut coram preposito in placitiis mai et autumnii comparerent.” A mention of urban citizens as holders of fiefs from the chapter is also included in Urkunde Albrisrieden (1347) RQZH 1.1:113; Urkunde Fluntern (1424) StAZ C II Nr. 1, Nr. 532. See Gilomen, *Grundherrschaft*, 141.

97. Urkunde Wettingen (1375) StAZ C II Nr. 375; Urkunde Kappel (1430) StAZ C II 1 Nr. 557; Urkunde Ötenbach (1431) StAZ C II 11 Nr. 730, see Urkundenregesten 6 Nr. 7331; Urkunde Selnau (1347) RQZH 1:113f. Nr. 2; Urkunden St. Martin (1342) Urkundenregesten 1 Nrs. 309 and 311; Urkunde Dominikaner Zürich (1376) Urkundenregesten 2 Nr. 2484.

98. A charter from 1278, for example, speaks of the presence “prudentum virorum, nobilium et ministerialium honestorum” at a court assembly of the Landgrave of Buchegg; FRB 3:371f. Nr. 391.

99. Kundschaft Bursins (1374) ACV C VIIa Nr. 404 fol. 1 (Perrodus Passerat); see Kundschaft Schwamendingen (1344) StAZ C I Nr. 2996 Bl. 2 (Rüdi Degen), 3 (Heinrich Veswer, Ulrioch Veswer, Rüd Wüst, Ruod der Smit, Ruod Koufman); Plaid Général Pully (1368) SDVD B1:612 Nr. 372; Öffnung Wald (c. 1430-1460) StAZ A 97.7 Nr. 6; see also [Ch. 2](#). Occasionally, witnesses particularly emphasized that the lords were personally present at a given manorial court assembly; see, e.g., Kundschaft Kölliken (1419) StAG Urkunden Lenzburg 65 Bl. 1; portions published in RQAG 2.1:510 (Hans Illenbrecht).

100. Öffnung Buchsgau (1323) FRB 5:314f. Nr. 268. Likewise, in 1405 the local representative (*Twingherr*) of the small lordship of Münsingen went to the judges who represented him in the local manorial court and inquired about a declaration. Urkunde Münsingen (1405) RQBE 2.4:15f. Nr. 11. A similar instance was again recorded there in 1413; see *ibid.*, p. 23f. Nr. 14.

101. Öffnung Döttingen (1398) RQAG 2.5:252.

102. E.g., Kundschaft Erlinsbach (1421) RQAG 2.2/2:161f.; Kundschaft Unterentfelden (1435) StAAG Urkunden Lenzburg 77f, 77g, 78. The handing over of the staff of office was sometimes also mentioned in Weistümer: see, e.g., Öffnung Breite-Hakab (1439) RQZH 1.2:141 Nr. 3. According to an arbitration court document from 1437 regarding the division of competence between the landlords and the steward at the manorial court of Dietikon-Oberndorf, the manorial court assembly should decide which of the two lords was entitled to the “staff” (*Stab*) in the questionable issue: RQZH 1.2:367 Nr. 12; Kundschaft Pieterlen (ca. 1373) FRB 9:362 Nr. 799 (Petrur Turny). There is a rich body of literature on the subject of official court staves: Rösener, “Dingenossenschaft,” 72; Gilomen, *Grundherrschaft*, 148; Carlen, “Stab”; Kocher, *Richter*.

103. Even a document from 1285 describes the settlement of a dispute between landlordship (*Grundherrschaft*) and stewardship (*Vogtei*) in the village of Mollens in the Jura through a declaration of the dependents, which may have happened outside the manorial court. Urkunde Mollens (1285) ACV IB 217.22a and b; Urkunde Fluntern (1289) UBZ 6:48–50 Nr. 2067; Urkunde Dättlikon (1454) RQZH 1.2:306–8 Nr. 2; Urkunde Wald (1466) StAZ A 97.7 Nr. 6. An arbitration court document designates the settlement of small conflicts between landlords and holders of legal power in the place of Oberndorf explicitly as a competence of the local manorial court: Urkunde Oberndorf (1437) RQZH 1.2:367 Nr. 12.

104. Weistümer also occasionally contain direct information regarding how such regulations originated in the manorial courts. One example of this is the comment on the determination regarding the division of fees between the landlord and the steward, according to which the steward’s bailiff raised objections in the manorial court assembly against the regulation: Öffnung Ober-Dürnten (1485) RQZH 1.2:503–506 §12, see Öffnung Dättlikon (1454) RQZH 1.2:305–8 Nr. 2. See Perrin, “Chartes de franchises et rapports de droits en Lorraine,” 16–20.

105. Kundschaft Pieterlen (1373) FRB 9 Nr. 799:361 (Niglaus Zimmerman, Herman Walthus).

See also Urkunde Neftenbach (1477) StAZ A 131/1 Nr. 38; Öffnung Seftigen (1459) StAB A I Nr. 453a (Stadtbuch) fols. 262r–265v, mentioned in RQBE 1.1+2:564 Nr. 199, edited from a later copy in RQBE 1.4/1:83–89; Siegrist, “Beiträge,” 148f.

106. E.g., Enquête Bursins (1374) ACV C VIIa Nr. 404 fol. 1 (Perrodus Passerat), 5 (Nicholaus Bertholetus); Kundschaft Oberhofen (ca. 1400) StAB Urk. F Stift Nr. 17 fol. 2v–3r. A few witnesses had seen Bächli, a resident of Weiler, take part in the manorial court of Hilterfingen (Berthold von Riede, Jenni Röggi, Üli von Swanden, and others). Others affirmed that he had gone to the court of Lauenen (Cüntz von Widen, Heini Zulhalter). See Kundschaft Landiswil (1422) StAB Varia I Landiswil 1422; Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nr. 20 (Uly von Tobel).

107. Klagerodel Amsoldingen (ca. 1300) FRB 4:47 Nr. 40: “Wir sprechen ôch, das her Berchtold von Ansoltingen unser gerichte sweken wil und under trûken in den weg, das er nût wil sin under unserm gerichte, und fürbûtet allen dien, die uf sinem gûte ennot dem sewe sitzent, das si vor uns nût ze gerichte standen; und wil, das si vor ime ze grichte standen vor der burg ze Stoken, da nie me gerichte wart, und die selbe burg in unser gerichte hóret, und alle die, dien er es verbûtet, die enont dem sewe gesessen sint.” For similar complaints by the lords of Belmont about the annexing of their manorial court in Cudrefin by the counts of Savoy, see Urkunde Waadt (1300) Usteri, *Schiedsurkunden*, 463f. Nr. 269, from an apparently much later copy; Urkunde Bursins (1374) MDR 1.3:121–29.

108. E.g., Kundschaft Brugg (1480) RQAG 1.2/2:6f, note 17 (Clewi Thalín, Hans Bart). A few Weistümer emphasize the secondary significance of declarations, that they required that those obligated to appear establish their presence by the time of the declaration (*öffnung*), e.g., Öffnung Hegi (1396), Kläui, *Geschichte*, 357: “und welicher ... nit keme, dieweil das offnen wert, der ist dem bropst dry schilling vervallen”; Öffnung Berg am Irchel (15th c.) RQZH 1.1:494 § 4.

109. E.g., Plaict Lausanne (1368) SDVD B1:219. See also Rösener, “Dinggenossenschaft,” 48, 65f.

110. Enquête Romainmôtier (1263) MDR 1.3:557–59; see Kundschaft Bülach (ca. 1432) StAZ A 97.2 (Bülach) Nr. 9 fol. 2v (Cúny Nu[^] kom); Kundschaft Schwamendingen (1344) StAZ C I Nr. 2996; Kundschaft Grüningen (ca. 1435) StAZ A 124/1 Nr. 25 fol. 5r (Cúni Egg); see further the references in the following notes.

111. E.g., Kundschaft Schwamendingen (1344) StAZ C I Nr. 2996 (practically all witnesses); Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689b fol. 1v (Hans Gensgern), c fol. 1v (U[^] Ili Füssli), d fol. 1r (U[^] Ili Jung), 1v (Hans Meyer), 2r (Wernli Seligman), e fol. 1v (Old Snider (*der alt Snider*), Old Cristin (*der alt Cristin*); Kundschaft Landenberg (1437) StAZ A 131/1 Nr. 14a (Hans Meier, Werni Schwermer, Hans Faber); Kundschaft Madiswil (1456) StAB A I 453 fols. 229r–230v (Ulli Keser, Hensli Langenmann).

112. Kundschaft Kölliken (1456) StAB UP 8 Nr. 36: “Ouch do er ein kleiner knab sy gewesen, das in sin vater mit im fürte und in und ander singelich hiessent daruff losen, so sy des thwings recht offneten, das sy das ouch wissent so sy erwöchsent” (Heini Hagen).

113. E.g., Kundschaft Pieterlen (1373) FRB 9:361–71 Nr. 799; Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689e.

114. Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689e fol. 1r (Jos Tek).

115. Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689e fol. 1v (Old Snider), 2r (Wernli Seligman, Hans Smid), 2v (Hans Meyer).

116. Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689a fol. 2r (Bertschi Teppeller), b fol. 1v (Üli Müller), c fol. 1r (Üli Fu[^] ssi), d fol. 1r (Üly Jung).

117. Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689b fol. 1r (Hans Brennwalder).

118. See Ch. 3.

119. Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689d fol. 2v.

120. E.g., Kundschaft Grüningen (ca. 1435) StAZ C I Nr. 2996 fol. 3v: “Es seit Lúti Zender, das er meine, er sig me denn zweintzig mälén by söllichen sachen gesin und hab nie anders gehört denn schlecht erteillen den fründen den lib und den herren das gût, denn jetzt uff

den hintersten landtag"; see 3r (Heini Gubler), 3v (Heini Boller); Kundschaft Landenberg (1437) StAZ A 131/1 Nr. 14 u. 14a (Hans Meyer); Kundschaft Grüningen (ca. 1435) StAZ C I 2996 fol. 4r (Peter Hertenstein), 4v (Heini Müller); Kundschaft Hallwil (1481) StAB UP 8 Nr. 40 fol. 1v (Hensli Zeiger); Kundschaft Brugg (1484) RQAG 2.2:34–37 (Hans Bröchi).

121. See Ch. 4. For similar observations for places in Lorraine, see Perrin, "Chartes de franchises et rapports de droits en Lorraine," 35.

122. This difference was especially clearly expressed in the arbitration court documents of Oberwinterthur (1490) StAZ C II 16 Nr. 454: "das von alter har allein des Gotzhus lüt und die, so uff des selben Gotzhus guetern sitzend und sunst deheiner under inen in der gemeind gericht genössig sin sölle, usgenommen zú den meien jargerichten [i.e., the large manorial court]."

123. Regelverstösse: Kundschaft Amsoldingen (1389) FRB 10:515 Nr. 1090; Urkunde Gasel (1420) RQBE 1.1:205 Nr. 325; Urkunde Bümpliz (1449) RQBE 1.5:46 Nr. 33; Urkunde Diesbach (1471) RQBE 2.4:39 Nr. 25. Property disputes: Urkunde Buchegg (1286) FRB 3:412f. Nr. 429; Urkunde Bülach (1376) StAZ C I Nr. 2927, partially ed. in Hildebrandt, *Bülach*, 400f. Elections: Urkunde Buchegg (1286) FRB 3:412f. Nr. 429; Urkunde Baulmes (1402) SDVD Vol. B2:452 Nr. 385; Kundschaft Brugg (1480) RQAG 2.2:29. See Gilomen, *Grundherrschaft*, 131. Dues that were collected on behalf of the Plaicts Généraux of Lausanne between 1321 and 1339 are listed in Savoyard accounting rolls: AST Camerale Sabauda Inv. 71 fol. 52 and 69 fol. 5. At the end of the court assembly, dues were sometimes listed: Urkunde Baulmes (1402) SDVD Vol. B2:453 Nr. 385; Urkunde Lucens (1335) MDR 1.7:106–19. The "placitum generale" of the village of Aigle in Chablais in the Pays de Vaud can scarcely be understood as anything besides a collection point for dues. Urkunde Aigle (1290) SDVD Vol. B2:25 Nr. 34. For the surrounding regions, see Rösener, "Dinggenossenschaft," 57; Spiess, "Einleitung," 16.

124. Urkunde Buchegg (1286) FRB 3:371f. Nr. 391; see the apparently later produced Offnung (1302) FRB 4:114–116 Nr. 102, as well as Offnung Buchsgau (1323) FRB 5:314f. Nr. 268.

125. Urkunde Ins (1387) FRB 10:342 Nr. 729; Urkunden Münsingen (1405 and 1413) RQBE 2.4:15f., 23f. Nrs. 11 and 14; Urkunde Birmensdorf (1465) RQZH 1.2:46. For further examples of such documents from the canton of St. Gall, see Müller, *Offnungen: Ein Beitrag*, 33f.

126. Sometimes called "circuits" (*Umgänge*) in German. Urkunde Ringgenberg (1291) FRB 3:502 Nr. 515 (in copies from the fifteenth century); Plaid Vautravers (1302) Glaenzer, *Plaid*, 46 § 5; Plaid Pully (1368) SDVD B1:615 Nr. 372.

127. A normative description of the procedure for a circuit is contained in the commentary on the Plaict Général of Lausanne from c. 1400–1430: SDVD B1:249f. Nr. 192. A few conflicts during such circuits are described in passages from witness deposition statements: Enquête Villars (1446) ACV C IV Nr. 460 fol. 3r (Antonius Rossier), 7v (Bisuntius Bessar), 10r (Vuillermus Rastel); Kundschaft Willisau (1478) RQLU 2.2:70f.; see Bader, *Untergang*.

128. Kundschaft Grüningen (ca. 1435) StAZ A 124/1 Nr. 25 fol. 4v: "seit das er vor ziten wol hab me spenn und stöss dar umb an offem gericht gehört" (Welti Rebman); see fol. 6r (Welti Gartner), as well as the references in the following two notes.

129. Kundschaft Grüningen (ca. 1435) StAZ A 124/1 Nr. 25 fol. 3v: "do wolt man an einam landtag, dz der Leman das guot hett gesündret. Do sprech der Leman: Ich wil kein núwes da machen noch súndren, man bedarff sin nit, die herren nement doch kein ligend gút." (Heini Boller). Other witnesses recounted the same anecdote: fol. 2v (Gross Üli Adelbrecht), 3r (Heini Gubler), 4r (Wirt von Bertschikon).

130. See Goody, *Power*, 47–85.

131. Urkunde Weissenburg (1477) RQBE 2.1/2:53f. Nr. 23.

132. Plaid Général Pully (1368) SDVD B1:612 Nr. 372; see Urkunde Pully (1302) AST Corte 12 pq. 35 (Pouiller) Nr. 1. On legal declarations as a duty of those who had sworn fealty, see Elsener, "Viri"; Rösener, "Dinggenossenschaft," 62; Spiess, "Einleitung," 91.

133. Öffnung Holderbank (1470) RQAG 2.1:657–64; Öffnung Oberwinterthur (1472), Kläui, *Geschichte*, 353; Öffnung Hegi (1515), Kläui, *Geschichte*, 357. For the listing of elderly men who made declarations, see Kundschaft Königsfelden (1481) RQAG 2.2:29 Nr. 18 (Caspar Etterlin); Öffnung Ober-Dürnten (1485) RQZH 1.2:503–6; Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689b fol. 1r (Hans Brunnenmeister), d fol. 2v (Hans Meyer), e fol. 1v (Old Snider); Kundschaft Grüningen (ca. 1435) StAZ A 124/1 Nr. 25 fol. 2v (Great Üli Adalbrecht), 3r (Ruotschman Pfenninger, Heini Gubler), 4r (the tavernkeeper at Bertschikon), 5v (Cúnrat Pfister); Urkunde Münsingen (1413) RQBE 2.4:23f. Nr. 14.

134. Öffnung Ringgenberg (1374) RQBE 2.6:71f. Nr. 64. Similar is Öffnung Gachnang (1459) StA Einsiedeln E.N. Nr. 1.

135. Plaict Romainmôtier (1266) SDVD Vol. B2:375 Nr. 343 § 2: “Ita videlicet quod nemo se moveat de loco suo nec aliquis loquatur nisi licentiatu a priore.”

136. E.g., Öffnung Bonstetten (15th c.) RQZH 1.2:102–8.

137. Semantic analysis indicates that a dialogue structure is inherent to the description of declaration ceremonies in Weistümer, which allowed the representatives of the lordship to force an apparent assent from the dependents; see Toch, “Asking”; Algazi, “Tradition”; Algazi, “Vergessen”; Rösener, “Dinggenossenschaft,” 70f. The premise of these studies—that Weistümer provide direct records of the oral events of the manorial court—is only tenable in the rarest of cases; see Ch. 4. But a power imbalance between the participants in the assembly could have been so obvious to their contemporaries that it is reflected in written descriptions of declaration-ceremonies as well as in the ceremony itself.

138. Isenmann, “Ratsliteratur,” 385–98; Teuscher, *Bekannte*, 218–34.

139. Plaid Pully (1368) SDVD B1:613f. Nr. 372 § 10.

140. Plaict Général Apples (1327), Cottier, *Abbaye*, 191 Nr. 3; the newest edition of the Weistum refrained from repeating these remarks: SDVD 2B:419 Nr. 369. A few dependents who were allowed exemptions from otherwise commonly binding regulations are occasionally found in the Weistümer of German-speaking Switzerland, e.g., in Öffnung Rengg (15th c.) StAZ G I Nr. 103 fol. 25r: “Aber ist ze wissent wer saesshafft ist in dem hof ze Rengg, das der jaerlich ze der vasnacht geben sol einem bropst von Zürich ein vasnachthuen ane allein zwo hofstetten, da die ein ist des Buecheneggers die ander ist Katherinen Fuermen und Uelrich irs brueder.”

141. Kundschaft Dielsdorf (1435) StAZ C I Nr. 2689b fol. 1v (Hans Gensgern).

142. Kundschaft Bülach (ca. 1432) StAZ A 97.2 (Bülach) Nr. 9 fol. 2v.

143. On the adoption of writing in manorial courts in neighboring regions, see also the observations by Morsel, “Prélèvement,” 161; Holenstein, *Huldigung*, 199–203; Spiess, “Einleitung,” 18–20; Stahleder, “Weistümer,” 554f.; Lamprecht, *Wirtschaftsleben*, 643.

144. Kundschaft Rüeggisberg (ca. 1330) FRB 5:77–777 Nr. 730; Öffnung Döttingen (1398) RQAG 2.5:254; Urkunde Dättlikon (1454) RQZH 1.2:306–308 Nr. 2.

145. “Per modum innovationis, renovationis, seu intimationis,” Öffnung Döttingen (1398) RQAG 2.5:254. See also the formulations according to which the legal regulations (*jura et onera*) were “*inventata et renovata*” in the manorial court before they were recorded (*conscripta*); Öffnung Höngg (1338) Statutenbücher, 150.

146. On this, see also Ch. 4; Holenstein, *Huldigung*, 208–16; Spiess, “Einleitung,” 22.

147. See, e.g., Mihm, “Dingprotokoll.”

148. Öffnung Seftigen (1459) StAB A I Nr. 453a (Stadtbuch) fols. 262r–265v; see above, note 110.

149. Öffnung der Höfe des Klosters Engelberg im Zürichgau und Aargau StA Engelberg (13th–15th c.) D1: “Wir han óch an vinsren hantuestin vnd briuen: wer an lip erben stirbet, dc wir den erben sullen.” Weistum Berg am Irchel (15th c.) RQZH 1.1:488 Nr. 6: “und stand söllich zins, rennt und gült in des gotzhus urbar und zinsbücher verschriben.” Propstoffnung Breite (1439) RQZH 1.2:140 Nr. 3 § 2: “Item das gotzhus ze Embrach haut ouch uff ettlichen güttern die in des gotzhus zinsbüchern oder ródeln verschriben stand.” Öffnung Dietikon-Oberndorf (15th century) RQZH 1.2:365 Nr. 11: “Wir hand ouch in demselben umkreis ze

richten ... als vorgeschreiben stat und unser hauptbrief, den wir darüber hant, bas lütert, denn hie geschriben stat.”

150. See Ch. 4.

CHAPTER 2

1. Enquêtes Chalon (1470/71) SDVD Vol. A1:261 (Pierre Aymonet), 297f. (François Criblet).

2. Enquête Motagny (1469) ACV AF 11 fol. 35v (Coenet).

3. See, e.g., Simon, *Grundherrschaft*; Bader, *Dorf*, 8–13; Champoud, *Droits*.

4. Brunner, *Land*, 119–64. For new arguments regarding Brunner’s work on rural society, see Melton, “Folk”; Oexle, “Mediävisten.”

5. Brunner, *Land*, 97–110, 343–47.

6. Algazi, *Herrengewalt*.

7. For a bibliographic overview with coverage of the region under study, see Meier and Sablonier, *Wirtschaft*; Gilomen, “Sozialgeschichte.”

8. See the following precise case studies: Zangger, *Grundherrschaft*, 110–72; Dubled, “Administration”; Gelting, “Bases.” On the power of officials, see Bader, *Dorfgenossenschaft*, 67.

9. Sablonier, *Adel*; Christ, *Kooperation*; Andenmatten, “Maison.”

10. For the region under study, see, for example, the recent monographs Egloff, *Herr*; Hürlimann, *Beziehungen*.

11. See Ch. 1.

12. E.g., Enquête Motagny (1469) ACV Af 5.2 Nr. 2 p. 21 (Petrus Montagnatus), 22 (Petrus Compondu); Enquêtes Chalon (1470/71) SDVD Vol. A1:258 (Pierre Aymonet), 276 (Jean Vilberti), 281 (Etienne Clerici), and many more.

13. Enquêtes Chalon (1470/71) SDVD Vol. A1:158 (Pierre Aymonet).

14. Enquêtes Chalon (1470/71) SDVD Vol. A1:267.

15. E.g., Enquête Montagny (1469) ACV Af 5.2 Nr. 2 fol. 13 (Petrus Montagnatus), 20 (Perronetus Bidaul), 22 (Petrus Bidaul), 36 (Johannes Baqchier), 69 (Guillermus Godissardi); Enquêtes Chalon (1470/71) SDVD Vol. A1:228 (Jacques Praz), 281 (Etienne Clerici), and others. There is an extant court document for the investment in office of Guillaume de Baulmes, the castellan named by Guillaume. He swore on this occasion to defend the freedom of the town and appointed a vice-castellan as well as another official (*nuncius*): Urkunde Grandson (1464) SDVD Vol. B2:110f. Nr. 99.

16. Enquêtes Chalon (1470/71) SDVD Vol. A1:36f., 55, 283, 301.

17. On the provosts of Amsoldingen in the thirteenth century, see Marchal, “St. Mauritius,” 111f.

18. For the description of *minister* or *ministerialis* for such people, see Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:65, 68, 72, 83, 85. The *ministeriales* Heinrich von Riede and Konrad Gobi appeared from around 1270 to around 1320 as witnesses and recipients of benefices in documents from Amsoldingen: FRB Bd. 2:793f. Nr. 722 (1271), 795 Nr. 723 (1271), Bd. 5:739 Nr. 723 (1317), 760 Nr. 743 (1317).

19. E.g., Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:72: “rector et ministeriales sui omnes decimas locaverunt” (Konrad, rector of Stettlen), 75 (Werner von Ringoltswil and H. Ritschard). The canon from Interlaken, Werner von Basel, explained that the provost loaned the tithe to most leaseholders for a period of two, three, or five years (p. 79).

20. Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:74.

21. Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:67 (Konrad Sprangli), 68 (Ulrich, “Piscator” and R. Lanxi), 72 (Rudolf zur Müli), 76 (Ulrich von Rümli).

22. See in this regard also Enquête Apples (1413) ACV C VIIa; Zangger, “Alltagsbeziehungen”; Gilomen, *Grundherrschaft*, 257.

23. Enquête Grenet (1396) ACV C IV Nr. 436 Heft B fol. 6r; Enquête Vaux-et-Chantegrue

(1432) ACV Ad 25 fol. 42vf.

24. Enquête Hautcrêt (1278) ACV IB 55 Nr. 44: Fridheltus, Salvagius and Perretus; other holders of the office who were named include the first witness (whose name is illegible) and Salvagius. Similar relationships are attested by Enquête Yverdon (1337) ACV C IV Nr. 224.

25. Enquête Hautcrêt (1278) ACV IB 55 Nr. 44 (Cunodus, who is also called Salvagius).

26. Enquête Villars (1446) ACV C IV Nr. 460. The following are listed as *nuncii* of the lordship of Lausanne: Anthonius de Clauso (3r), Johannes Aymonet (3r, 8v), Perrodus Michio (4v, 8r), Anthonis Viviant (4v, 8rf.), Publox (5r), Johannes Cornier (5r, 6r, 9v), Johannes Pity (7rf., 10r), Jacquetus Cutelle (7rf.), Jacquetus Borjaux (7v), Johannes Dagnyon (7v), Jaquetus de Vernan (7r, 8r, 9v), Petrus de la Coligny (8v), Perrodus Baul (10r).

27. E.g., Enquête Villars (1446) ACV C IV Nr. 460 fol. 2v, 3r, 8r, 8v.

28. Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:73f. Nr. 34 (H. and R. Kriecho with information about the occupation of his father); Enquête Vaux-et Chantegrue (1432) ACV Ad 25 fol. 47r (Symon de Bannans).

29. Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:75, 76, 83, 85 Nr. 34.

30. Kundschaft Grüningen (ca. 1465) StAZ A 131/1 Nr. 22 fol. 2r (Cuonradt Würgler).

31. Enquête Fief Blonay (1433) ACV Af 11 fol. 41v–43v (Margerita relictia Johannis).

32. Enquête Apples (1413) ACV C VIIa Nr. 469 (Anthonius Gachet and Richardus Mestener).

33. Enquête Apples (1413) ACV C VIIa Nr. 469 (Richardus Mestener).

34. Enquête Grenet (1396) ACV C IV Nr. 436, where the witness deposition is available in three copies. The most complete version is Heft B, fol. 4v–6v; references that follow refer to this document.

35. Zangger, “Alltagsbeziehungen.”

36. Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:54 Nr. 34.

37. Enquête Vaux-et-Chantegrue (1432) ACV Ad 25 fol. 52vf. (Jean de Domperie).

38. Enquête Vaux-et-Chantegrue (1432) ACV Ad 25 fol. 45v, 47v (Symon de Bannans), 49v, 50v (Jehan de Domperie).

39. Castelnuevo, *Ufficali*, 294–323, and [Ch. 5](#).

40. Enquête Sevaz (1278) ACV IB 55 Nr. 44: “quod dictus Walterus [de Palézieux] cepit ... tamen nescit utrum juste vel injuste.... Interrogatus si illi de Paleseuz poserunt ibi misselieres, respondit quod sic ... in hoc anno cepit Wernerus [de Palézieux] ij gerbas per vim et in anno preterito cepit xij gerbas ipse vel nuncius suus per vim” (Cunodus); see also Kundschaft Hilterfingen (ca. 1312) FRB Bd. 5:73f. Nr. 34, p. 54 (H. Kriecho).

41. Kundschaft Worb (1436) StAB HA Worb 1436 fol. 9r (Dietrich Snider).

42. Urkunde Thun (1478) StAB Urkunden F Thun 1478.9.9.

43. Kundschaft Grüningen (1465) StAZ A 131/1 Nr. 20a; Kundschaft Spiez (1478) StAB Urkunden F Interlaken 1478.11.3.

44. Brunner, *Land; Algazi, Herrengewalt*.

45. E.g., Offnung Dietlikon Rieden (1420) RQZH Bd. 1.2:394: Offnung Bassersdorf (probably 15th c.) RQZH Bd. 1.1:388; Offnung Meilen (15th c.) StAZ G I Nr. 102 fol. 14r.

46. Enquête Villars (1446) ACV C IV Nr. 460 fol. 3rf. The same story was also told by Johannes de Clauso, who had requested the confiscation; see fol. 7r. For a similar account, see Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nr. 20.

47. Enquête Bursins (1374) ACV C VIIa Nr. 404 fol. 5 (Nicholaus Bertholetus).

48. Klageschrift (1411), Hottinger, “Beschwerdeschriften,” 133–38.

49. Kundschaften Grüningen (ca. 1430) StAZ A 124/1 Nr. 19, 20 (primarily Heiri Baller), 21.

50. Offnung Wald (apparently after 1466) StAZ A 97.7 Nr. 7. A date after 1466 is indicated for this redaction by the fact that the text rather abruptly inserts a provision about illegitimate succession, which a court decision established in this year, before the historical overview. See Urkunde Wald (1466) StAZ A 97.7 Nr. 6.

51. Klageheft Grüningen (1441) StAZ 124/1 Nr. 26 fol. 5r.

52. Twenty-five years later, a member of the Strehler family appeared as chairman of the manorial court, though it cannot refer to the same person, nor can it indicate a continuous term of office; Urkunde Wald (1466) StAZ A 97.7 Nr. 6.

53. Klageheft Grüningen (1441) StAZ 124/1 Nr. 26 fol. 5r.

54. For the most recent description of this incident: Sieber, “Reichsstadt,” 485–91; Niederstätter, *Zürichkrieg*, 71–183.

55. Fabeln und Märchen, 78–87, at p. 85 Vers. 100–120: “lat iu dienen liute und gut in der gegende swes ez si, des enlazet ir deheinen fri ... swaz ir mit gueten minnen noch hiute an in gewinnen, das muezens ouch zejare geben. da geturrens nimmer wider streben, so muzzen siz ouch immer tûn. swe iu hiute git ein hûn, der git iu ane geschrei zejare driu oder zwei.” The English translation is adapted from Thomas, *Fables*, 40–41.

56. Kern, *Recht*, 65f.; Goody, *Logic*, 127–70; Vollrath, “Rechtstexte”; Vollrath, “Mittelalter.” See Introduction.

57. For a few examples, see Bühler-Reimann, “Herkommen,” 96.

58. Olivier-Martin, “Roi”; for other *consuetudines* described as bad in high medieval monastic debates, see Boureau, “Moris,” 366–71.

59. See Ch. 1. Commentaire Lausanne (ca. 1430) SDVD Vol. B1:241: “Ideo videndum est quid est consuetudo. Est ius non scriptum diuturnis moribus populi comprobatum [other manuscripts have: approbatum], vel sic consuetudo est ius moribus vel usibus totius populi vel maioris partis immutatum communitalis et constitutum, habens legis auctoritatem. Dicitur autem consuetudo quasi communis assuetudo.” In fact, in Savoyard territories, the question was not merely one of *males consuetudines*, since the count of Savoy dismissed a legal custom invoked by one party in a court case as unacceptable; see (despite the title): Tappy, “Amédée.”

60. Enquête Apples (1413) ACV C VIIa Nr. 469: “Et per dictes triginta annos vidit semper debatur de dicta decima, quia aliquociens decimatores domini prioris recollerunt et levaverunt et aliquociens decimatores de Monterichier Johannes de Sever, Anthonii de Cottens dictam decimam recollerunt et levaverunt” (Johannes Grinsoz, alias Gros).

61. Return from imprisonment: Urkunde Romainmôtier (1360, excerpted in a record from 1373) ACV C VIIa Nr. 403; Enquête Villars (1446) ACV C IV Nr. 460 fol. 5r (Johannes Vuillod and Johannedus Guibaux). See the corresponding reversal document in a copy: *ibid.*, fol. 1 and AVL H4 363, in Original ACV C IV Nr. 403. On the demolishing of gallows, see Ch. 3. On water rights, see Kundschaft Dielsdorf (1489) StAZ C I Nr. 2689a (1435), fol. 1r (Üely Cristin).

62. Sablonier, “Leibherrschaft”; Weishaupt, “Zehntverweigerungen”; Zangger, “Alltagsbeziehungen.”

63. E.g., Enquête Romand (1277) ACV C Va Nr. 176 (1277) (Dominus Vivian); Enquête Villars (1446) ACV C IV Nr. 460 fol. 2v (Petrus Mulsavir), 3r (Anthonius Rossier), 3v (Johannes Tellin and others).

64. Enquête Apples (1314) ACV C VIIa Nr. 469.

65. Kundschaft Amsoldingen (1389) FRB Bd. 10:526 Nr. 1107 (Müller von Tannenbül, Jenni Kern, Peter Stogker, and others).

66. Kundschaft Willisau (mid-15th c.) RQLU Bd. 2.2:70f.

67. Reversal charters of the priory of Romainmôtier: SDVD Vol. B2:390 Nr. 353 (1359), 392 Nr. 356 (1377); of the count of Gruyère: 359 Nr. 331 (1475); of the lords of Grandson: 92 Nr. 85f. (1356), 93 Nr. 86 (1366), 109 Nr. 98 (1434); of the lords of Cossonay: 76 Nr. 70 (1404); of the counts and dukes of Savoy, see below.

68. For examples of reversal charters whose recipients were other lordships, see SDVD Vol. B2:384 Nr. 347 (Savoyards to Romainmôtier, 1314), 449 Nr. 383 (baillivat de Vaud to priory of Payerne, 1384).

69. Numerous reversal charters, many of them in communal archives, have been published in SDVD Bd. 2B, though some are only in the form of registers. Circumstances played a prominent role in the issuing of the charters, since the Savoyard territorial lordship

elsewhere had a documented claim to obtain provisions through extraordinary dues, for example at the visit of a lord: SDVD B2:330 Nr. 309 (1399), 280 Nr. 255 (1450); at the visit of the emperor: pp. 93 Nr. 86 (1366), 143 Nr. 124 (1365), 325 Nr. 301 (1365), 79 Nr. 72 (1414), 103 Nr. 93 (1414), 144 Nr. 130 (1414), 330 Nr. 310 (1414); for the dowry of children of the Savoyards: pp. 140 Nr. 121 (1346), 144 Nr. 128 (1406), 81 Nr. 75 (1428), 145 Nr. 132 (1428), 280 Nr. 256 (1451), 280 Nr. 257 (1457), 14 Nr. 16 (1459); for military campaigns: pp. 6 Nr. 6 (1391), 17 Nr. 21 (1487), 17 Nr. 22 (1488), 325 Nr. 301 (1365), 328 Nr. 304 (1387), 330 Nr. 307 (1391), 449 Nr. 383 (1384); for the acquisition of new lordships: pp. 227 Nr. 203 (1417), 81 Nr. 74 (1425).

70. For such phrases, see, e.g., Reversalurkunden SDVD Vol. B2:58 Nr. 61 (1329), 328 Nr. 304 (1387), 4 Nr. 4 (1362).

71. Reversalurkunde Les Clées (1329) SDVD Vol. B2:58 Nr. 61.

72. For a practical example, see AST Camerale Savoia Inv. 139 fol. 13, 26v.

73. Urkunden Moudon (1414) SDVD Vol. B2:144 Nrs. 129f. See the 1382 reversal of Amadeus VI of Savoy issued to the inhabitants of the town of Payerne, which similarly included the stipulation that they pay the named tax. Urkunde Payerne (1381) SDVD B2:225 Nr. 198.

74. Reversalurkunden Yverdon (1387, 1391) SDVD Vol. B2:328f. Nrs. 304 and 307.

75. See Reversalurkunden Romainmôtier (1388) ACV VIIa Nr. 433; Villars (1304) ACV C IV Nr. 433 fol. 1 (copy from 1446), with a later copy at AVL H4 Nr. 363 as well as Enquête Villars (1446) ACV C IV Nr. 433 and Enquête Oron (1396) ACV C IV Nr. 430.

76. Reversalurkunde Villars (1404), copied in ACV C IV Nr. 433 fol. 1: “dum tamen recederent ... ad dictum locum de Sorrens ibi proximum in quo dicte figure seu effigies preparate erant pro remissione seu recredentia corpium predictorum Johannis et Henslini [the two delinquents; a very exact description of the place follows] ... reperierunt paratas duas effigies seu figuras in duabus camisis tele albe plenīs paleis consutas et ... ad modum corpiū mortuorum vestitorum camisis albis...”

77. Enquête Grenet (1396) ACV C IV Nr. 430 fol. 4v (Johannes Brugato); see 3r, 3rf.

78. “In figura”: Enquête Grenet (1396) ACV C IV Nr. 430 fol. 4r, 5vf. (Mermetus Fornet, Johannes Maulmynnot); “in effigie”: Urkunde Villars (1404), copied in ACV C IV Nr. 433 fol. 1.

79. E.g., Enquête Villars (1446) ACV C IV Nr. 433 fol. 1v (Petrus Maalsalvier), 4v (Mermetus Michio).

80. In the 1446 deposition regarding jurisdiction rights in Villars, at any rate, it was still possible to examine thirteen men who said they had attended an effigy-return ceremony forty years earlier; Enquête Villars (1446) ACV C IV Nr. 433: Petrus Maalsalvier, Anthonius Rossier, Johannes Tellin, Petrus de Spera, Guillelmus Clementis, Johannes Vuillod, Johannesus Guibaux, Johannes Sontrez, Johannes Cornyerez, Anthonius Reis, Bisuntius Besar, Perrodus Macheral, and Mermetus Amondri. Of the fifteen witnesses who in 1396 were examined about, among other things, an effigy-return ceremony that took place nearly thirty years earlier, at least three had themselves been present; Enquête Grenet (1396) ACV C IV Nr. 430 (Nicodus de Sala, Mermetus Fornet, Johannes Rebolliat).

81. See above, n. 77.

82. Enquête Villars (1446) ACV C IV Nr. 433 fol. 3r (Johannes Tellin), see 1v (Petrus Maalsalvier). In contrast, Mermetus Michio (fol. 4v) saw the castellan with a retinue of three escorts. The bailiff of Lausanne's escorts are listed at the beginning of the reversal document of 1404, which is included in the same file as the witness deposition.

83. On jurisdiction, see Urkunde Romainmôtier (1263) MDR Bd. 1.3:59 (Dominus Nantelinus, Rochetus de Cletis); Enquête Hautcrêt (1278) ACV IB 55 Nr. 44 (Cunodus Cum); Kundschaft Rüeggisberg (ca. 1330) FRB Bd. 5:772 Nr. 730 (Ulrich von Turnden, Herr Ruodolf Kilchherr von Rügispurg), 773 (Heinrich Strubo, Cúnrat von Lonstorf, Laurencie Múntzer, Heinrich von Wallis, Johannes von Kramburg), 774 (Úlrich von Múleron, Lutold der Suter). On water rights, see Kundschaft Worb (1437) StAB HA Worb 1437.5.21 fol. 1r; Kundschaft

Dielsdorf (1435) StAZ C I Nr. 2689d fol. 1r (Johans Cristin). On forest rights, see Enquête Dommartin (end of the 13th c.) ACV C Va Nr. 157 (Petrus Sugnens); see Kundschaft Ringgenberg (1429) StAB Urkunden F Interlaken 1429.4.28 Heft 1 fol. 1v (Jenni im Boden), 2v (Wolti Schiffmann), 4r (Zus von Bach).

84. On such strategies, see Simon-Muscheid, “Reden.”

85. Among the list of references are Urkunde Romainmôtier (1263) MDR Bd. 1.2:357–59; Kundschaft Ringgenberg (1303) FRB Bd. 4:135 Nr. 117 (Hainricus Jossi); Urkunde Hautcrêt (1278) ACV IB 55 Nr. 44; Urkunde Orons (1297, Vidimus von 1444) ACV IB 55 Nr. 56; Kundschaft Bülach (ca. 1430) StAZ A 97.2 Bülach Nr. 9 fol. 1v (Uli Keller); see also Kundschaft Schwamendingen (1344) StAZ C I Nr. 2996.

86. E.g., Enquête Gruyère (1439) SDVD Vol. A1:118: “usus longeve observatum donec prescriptio subsequenta fuerit” (Jean d’Aubonne).

87. Enquête Gruyère (1439) SDVD Vol. A1:130 (Pierre Vionet), 134 (Antoine Servion), 139 (Antone Gilly), 121 (Perrod de Collonelli).

88. Enquête Gruyère (1439) SDVD Vol. A1:115 (Pierre Lauent), 137 (Antoine Chartreir); Enquêtes Chalon (1470/71) SDVD Vol. A1:223 (Jacques Praz).

89. Enquête Gruyère (1439) SDVD Vol. A1:125: “ius non scriptum mediante quo patria Vuaudi regitur et unicuique quod suum est tribitur” (Jean Serragin); see also p. 115. See Mommsen, *Corpus Iuris Civilis: Digest* 1.1.10.

90. Kundschaft Interlaken (1478) StAB Urkunden F Interlaken 1478.10.31 (Hensli Kramer).

91. Kundschaft Ringgenberg (1303) FRB Bd. 4:134 Nr. 117 (Petrus ab Egglon); see pp. 131 (R. Joner), 132 (Wernerus Seman).

92. Kundschaft Ringgenberg (1303) FRB Bd. 4:141 Nr. 117 (Johannes Kienholts), 143 (Conradus Brenner).

93. Enquête Chalon (1470/71) SDVD A1:212 (Jean Mistral), 243 (Jacques Bise), 252 (Pierre Aymonet), 400 (Jean de Ussie). Jacques de Praz (p. 492), indicates that it would be very difficult to know this, and that there are no princes in the area besides the Savoyards and those of Chalon. Another (Pierre de Compeyes, 388) is sure that the same rules apply to “minores” and “maiores.”

94. Kundschaft Birmensdorf (15th c.) RQZH Bd. 1.2:50 Nr. 16 (Hans Nesser, Albrecht Rütshy); Kundschaft Oberhofen (ca. 1300) StAB Urkunden F Stift Nr. 17 fol. 1r (Vyniger, Heini Hiltikon, Berthold von Riede, Wolhusen). For similar examples, see Sablonier, “Leibherrschaft.”

95. Kundschaft Ringgenberg (1429) StAB Urkunden F Interlaken 1429.4.28 Heft 2 fol. 4v (Ueli Schilt), see Klagerodel (bound in Heft 1 and paginated with fols. 10 and 15); Kundschaft Bülach (ca. 1430) StAZ A 97.2 Bülach Nr. 9 fol. 1r, see 3v and 1v, where the talk is of sixty hens that one gave as a gift to the duchess of Austria on the occasion of her visit to Baden.

96. Enquête Vaux-et-Chantegrue (1432) ACV Ad 25 fol. 52vf.: “venoyent bien souvent esdites villes et par impression concussion et autrement extorquoient desdits habitants plusieurs choses cestasavoir de l’un ung frommage ou deux et de l’autre ung florin ou deux ung gros ou deux et tout ce qu’ilz en pouyent avoir” (Jean de Domperie).

97. Clanchy, “Law.” Dilcher argues for a perspective that regards consensus formation as a component of the formal procedures of the late Middle Ages: Dilcher, “Bildung.” For the realm under investigation, see Stelling-Michaud, *Université*, 254.

CHAPTER 3

1. Le Roy Ladurie, *Montaillou*; Ginzburg, *Formaggio*; Schwerhoff, *Köln*. For the region under examination, see Burghartz, *Leib*; Simon-Muscheid, “Reden.”

2. See, e.g., Fried, *Schleier*, 175–86; Tremp-Utz, “Gedächtnis”; Marchal, “Meisterli.”

3. Le Roy Ladurie, *Montaillou*, 14.

4. Inspiring in this regard are Vismann, *Akten*; Kittler, *Aufschreibssysteme*.

5. Scharff, “Suche”; Maire Vigueur and Paravicini Bagliani, *Parola*; Rosaldo, “Door.” A

seminal contribution to this discussion is advanced in Grundmann, "Ketzerverhöre."

6. Marchal, "Mémoire"; Trossbach, "Baur." For a discussion of the broader research context, see Kuchenbuch, "Ecriture."

7. See the literature discussed in Ch. 4.

8. Assmann, *Gedächtnis*, 48–66.

9. See Ch. 1.

10. Fundamental works on the material configuration of medieval documents include Mostert, *Organizing*; Saenger, *Space*; Illich, *Vineyard*; Rouse and Rouse, *Witnesses*; Martin and Vezin, *Mise en page*; Clanchy, *Memory*, 114–44.

11. See, e.g., Urkunde Hautcrêt (1221) ACV IB 55 Nr. 19; Urkunde Sigriswil (1236) FRB 2:163 Nr. 151; Urkunde Hüttenmansei bei Interlaken (1239) FRB Bd. 2:189 Nr. 180; Urkunde Romainmôtier (1263) MDR 1.3:357–59; Urkunde Romand (1277) ACV C Va Nr. 176.

12. See Ch. 1.

13. See, e.g., Urkunde Payerne (1375) AST Corte 12 pq. 34 (Payerne) Nr. 11, with the short notation: "inquisitione diligencius ut valuimus per nos facte"; for a similar statement, see Urkunde Hallwil (1429) RQAG 2.1:179f.

14. Enquête Chevallaz (1278) ACV IB 55 Nr. 44; see Enquête Oron (1360) ACV IB 56 Nr. 171.

15. The early records produced as notarial instruments include Enquête Estavayer (1337) ACV Va Nr. 157; Enquête Grenet (1396) ACV C IV 439 fol. 7r (Vidimus, which describes the no-longer extant original as a notarial instrument); Enquête Villars (1446) ACV C IV Nr. 460. Yet no authenticating marks are used in, for example, Enquête Bursins (1374) ACV C VIIa Nr. 404; Enquête Oron (1360) ACV IB 56 Nr. 71.

16. See, e.g., Kundschaft Regensberg (1409) StAZ C I Nr. 2690; Kundschaft Bülach (ca. 1430) StAZ A 97.2 Bülach Nrs. 6–9; Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nrs. 15–23; Kundschaft Hallwilersee (1481) StAB UP 8 Nr. 39 and 40.

17. Urkunde Morges (1296) SDVD Vol. B2:120–25 Nr. 107, photography in Millioud, *Seigneur* (appendix); Kundschaft Ringgenberg (1303) StAB Urkunden F Interlaken 1303; Kundschaften Hilterfingen (ca. 1312) StAB Urkunden F Stift 1318.8.7; Enquête Estavayer (1337) ACV Va Nr. 157; Kundschaft Schwamendingen (1344) StAZ C I Nr. 2996.

18. See, e.g., Enquête Oron (1360) ACV IB 56 Nr. 171; Enquête Romainmôtier (1374) ACV C VIIa Nr. 404; Kundschaft Konolfingen (14th c.) RQBE 2.4:12f. Nr. 8; Kundschaft Grüningen (ca. 1430) StAZ A 1/124 Nrs. 15, 18; Kundschaft Landiswil (1422) StAB Varia I Landiswil 1422; Enquête Hautcrêt (1424) ACV IB 148 Nr. 259.

19. Bäuml and Rouse, "Roll." For criticisms, see Bumke, *Kultur*, 774; Clanchy, *Memory*, 135–44.

20. See, e.g., Urkunde Bern (1305) FRB 4:227f. Nr. 196; cf. Kundschaft Zug (1399) UBZG 1:138 Nr. 313, which discusses an earlier witness deposition that was "told" (*erzullet*) by one of the disputing parties.

21. Kundschaft Morges (1296) SDVD Vol. B2:120–25 Nr. 107; see Millioud, *Seigneur*; Kundschaften Hilterfingen (ca. 1312) StAB Urkunden F Stift 1318.8.7.

22. Urkunde Evian (1278) ACV IB 55 Nr. 44.

23. Enquête Moudon (1305) ACV C II Nr. 33; a partial edition is in SDVD Vol. B2:138f. Nr. 118. In the fourteenth century the numbering of the witnesses was still occasionally a characteristic of witness depositions from the territory of the bishopric of Lausanne; see Enquête Estavayer (1337) ACV C IV Nr. 224; Enquête Bursins (1374) ACV C VIIa Nr. 404; Enquêtes Grenet (1396) ACV C IV Nrs. 430 and 436; Kundschaft Ringgenberg (1303) FRB 4:130–46 Nr. 117. See StAB Urkunden F Interlaken 1303.

24. Kundschaft Ringgenberg (1303) FRB 4:146–49 Nr. 117. The scribe who recorded the witness depositions in favor of Amsoldingen regarding the tithe rights of the church of Hilterfingen ca. 1310 proceeded along similar lines. He followed the organization of parts of the witnesses' answers according to the individual articles, but only for the first six of forty witnesses; Kundschaft Hilterfingen (ca. 1312) FRB 5:65–70 Nr. 34.

25. See, e.g., Enquête Bursins (1374) ACV C VIIa Nr. 404 Bl. 3: “Interrogatus super nono articulo praedicto dixit quod nichil scit” (Aymo Baron); there are similar notations for most of the subsequent witnesses.

26. One of countless examples is Enquête Bursins (1374) ACV C VIIa Nr. 404. The witness Perrodus Passerat gave as examples Thomas Gottefloz and Johanes Tehns, who were punished for disturbing corpses; their punishment was the subject of Articles 16 and 17, but the witnesses had already mentioned it in answering the fifth article, in which they both referred to the fact that the opposing party had always recognized the jurisdiction rights of the prior (folio 1f). Under Article 16, the scribe noted (folio 2): “Interrogatus super xvjo articulo, qui sic incipit: Item quod quid vocatus frater Johann etc. Dixit ipsum articulum esse verum ut superius de ipso declaravit” (Perrodus Passerat). See also the very similar folio 5 (Nicholaus Bertholetus).

27. Kundschaft Grüningen (ca. 1465) StAZ A 131/1 Nr. 21 (thirteen-page volume with individual statements), 22 (six-page volume with a statement posited at the beginning and a list of witnesses that confirmed it and sometimes offered supplementary information), 25 (scroll with a list of witnesses who confirmed a statement posited at the beginning), 28 (narrow strip of paper with statements from only three witnesses). In favor of Kyburg: Nrs. 33 (scroll with individual statements), 26 (scroll with a list of witnesses who confirmed a statement posited at the beginning), 28, 30, 31 (presumably the intention of Nr. 33), 20a (document of the court of Winterthur about the examination of five witnesses conducted before the court). It is unclear which party the statements on the two lists, Nr. 23 and 24, favored. Similarly, the following are split into many documents: Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nrs. 15, 19, 22; Urkunden F Interlaken 1422; Kundschaft Oberhofen (ca. 1400) StAB Urkunden F Stift Nr. 17; Kundschaft Dielsdorf (ca. 1435) StAZ C I Stadt and Land Nr. 2698–2689 a, b, c, d, e (undated, ca. 1435).

28. Stellungnahme Hilterfingen (ca. 1312) FRB 5:56–59 Nr. 34; Stellungnahme Grenet (1396) ACV C IV Nr. 436 Heft B fol. 8r–11v.

29. Kundschaft Hilterfingen (ca. 1312) FRB 5:36f. Nr. 34; see StAB Urkunden F Stift 1318.8.7.

30. Stellungnahme Hilterfingen (ca. 1312) FRB 5:56–59 Nr. 34: “melius est pauca ydonea effundere, quam aures audiencium multis inutilibus pergravare.”

31. Stellungnahme Hilterfingen (ca. 1312) FRB 5:58 Nr. 34.

32. Lepsius, *Zweifeln*, 87–89.

33. Stellungnahme Hilterfingen (ca. 1312) FRB 5:60 Nr. 34: “Segnius irritant animos demissa per aures, quam que sunt oculis subjecta fidelibus.” See Herrman, *Horace*, 38, Vers 180. English translation from Fairclough, *Satires*, 463.

34. For more on invoking the distant past, see the section later in this chapter.

35. Stellungnahme Grenet (1396) ACV C IV Nr. 436 Heft B fol. 8v–9v. On the criteria for the disqualification of witnesses in Roman-canonical procedures, see Lepsius, *Zweifeln*, 39–45; Schnapper, *Testes*.

36. Enquête Grenet für Lausanne (1396) ACV C IV Nr. 430 fol. 4v.

37. Stellungnahme Grenet (1396) ACV C IV Nr. 436 Heft B fol. 9v: “Item de ce qu’il dit qu’il vit despendre le ij larons, il apparet clerement le contraire. Que deis la place don il dit qu’il loz vit despendre, se il avoit tous les oix qui sont ou monde, il—ne autre—ne pavoit voir le forches d’Orons des telle place.”

38. Stellungnahme Grenet (1396) ACV C IV Nr. 436 Heft B fol. 8v: “Item ait dipose et de la noie ensy com il dit com il contient en sa diposition qui sont xxxvij ans si Perrod Meszongie a dit qui ne sont meisqu xx en cay par quoy lous dipositions ne vaillent.” See fol. 8v: “La diposition de la feme noie ne vaul, por la cause devant au premier et au second proposes et ausy il ne sait le temps ne qui feme estoit.”

39. Stellungnahme Grenet (1396) ACV C IV Nr. 436 Heft B fol. 9r: “Item il a dipose d’une reetre qui dit qui Peronet Marsens de Monda, le quel estoit chastellain d’Orons, et dit que sont xxij an. Il appart clerement la dite diposition non valoir quar se sont plus de xxx ans

que Peronet Marsens ne fuit chastellein d'Orons et sont bien xxiiij ans qu'il fuit mors."

40. On methods of reckoning time, see Marchal, "Mémoire," 567–75; Bedell, "Memory."

41. Enquête Grenet für Lausanne (1396) ACV C IV Nr. 430. Other early examples appear in Kundschaft Zug (1399) UBZG 1:138–40 Nr. 313; Kundschaft Oberhofen (ca. 1400) StAB Urkunden F Stift Nr. 17; Kundschaft Ringgenberg (1429) StAB Urkunden F Interlaken 1429.4.28; Kundschaft Grüningen (ca. 1430) StAZ 124/1 Nr. 16; Enquête Thonon (1430) AST Corte 12 pp. 4 Nr. 3, partially edited from a later copy in SDVD Vol. A1:3–16; Kundschaft Büllach (ca. 1432) STAZ A 97.2 Bu"lach Nrs. 6–9; Kundschaft Landenberg (1437) StAZ A 131/1 Nr. 14 and 14a.

42. Especially extensive examples, often including more than a hundred folios, appear in Enquête Blonay (1433) ACV Af 11; Enquête Aubonne (1437) ACV Ab 15; Enquête Gruyère (1439) ACV IB 325 Nr. 35/1; Enquêtes Chalon (1470/71) ACV Af 5 and later; see in this regard also Enquête Vaux-et-Chantegrue (1432) ACV Ad Nr. 25, which was carried out by a court of the dukes of Burgundy in favor of the priory of Romainmôtier, as well as the volumes of witness depositions about landlord rights in Oberschwaben that are described in Maurer, "Gedächtnis," 185f.

43. On underlining, see, e.g., Enquête Vaux-et-Chantegrue (1432) ACV Ad Nr. 25 fol. 37v, 39v, 43v, 46r, 96v, 97r; Enquêtes Chalon (1470/71) ACV Af 5 fol. 67vf., 71vf., 72rf., 77rf., 79vf., 94v, 95r, 101vf; Enquête Vaux-et-Chantegrue (1432) ACV Ad Nr. 25 fol. 12v–13v, 22v, here primarily used for marking quotations. Marginal notations: see, e.g., Enquête Grenet in favor of the lords of Oron (1396) ACV C IV fol. 2v, 4v, 5r, 5v, 6r; Enquête Vaux-et-Chantegrue (1432) ACV Ad Nr. 25 fol. 26r; Enquête Villars (1446) ACV C IV Nr. 460 passim; Enquêtes Chalon (1470/71) ACV Af 5 fol. 97r, 97v. For similar approaches in witness depositions using Roman-canonical procedure, see Lepsius, *Zweifeln*, 28.

44. The list is included, unbound, in Enquêtes Chalon (1470/71) ACV Af Nr. 5 between fols. 90 and 91 and between fols. 133 and 134.

45. Enquête Villars (1446) ACV C IV Nr. 460 fol. 1v–5r, etc.

46. See [Ch. 1](#).

47. ACV IB 325 Nr. 35/1.

48. See, e.g., Kundschaft Ringgenberg (1429) StAB Urkunden F Interlaken 1429.4.28; Kundschaften Worb (1436/37) StAB HA Worb 1436.4.10 and 1437.5.21; Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nrs. 20, 22; Kundschaft Grüningen (ca. 1465) StAZ A 131/1 Nrs. 22, 25.

49. Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nr. 15.

50. See, e.g., Schorer, "Untertanenrepräsentation," 217–45; Head, "Haushalt."

51. See the literature cited in [Ch. 1](#).

52. Le Roy Ladurie, *Montaillou*, 18; Given, *Inquisition*, 25–51.

53. Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nrs. 18 and 17.

54. Kundschaft Ringgenberg (1303) FRB 4:143 Nr. 117 (Conradus dictus Brenner and Hainricus dictus z'Utrost), 146 (Rúdulfus dictus an der Hupplon).

55. According to Rudolf Hupplon, the phrasing the first group used was "pure and standing under the law" ("rain und stette unt reht"), while Hanrich z'Utrost said "pure and according to common use" ("raine und nut maine"); Kundschaft Ringgenberg (1303) FRB 4:146 Nr. 117 (Rúdulfus dictus an der Hupplon), 140 (Hainricus dictus z'Utrost).

56. Searleman and Herrmann, *Memory*, 123–42. Experiments have shown that the content that someone accesses from their (partially speculative) memories sometimes depends on keywords or cues—sometimes in the form of questions—that prompt them to recall. This is consistent with schema theory; see Roediger and Guynn, "Process," 201–25. See also Fried, *Schleier*, 121–52.

57. On this dispute, the procedure, and the records, see Wirz, *Moignes*; Kern, *Notes*.

58. Enquête Payerne (1420), Wirz, *Moignes*, 270 (Pierre de Stabulo).

59. Enquête Payerne (1420), Wirz, *Moignes*, 257 (Jean de Marlier), 266 (Pierre Grunel), 268 (Guillaume Cussar), 269 (Jean de Cimtière), 273 (Anserme Ansel), 274 (Jean Mander), 275

(Pierre Bident, dit Girard), 281 (Octet Berroux), 282 (Octet Chevrod).

60. Extreme cases are the statements Enquête Payerne (1420), Wirz, *Moignes*, 202 (Gauchet de Citurno), 230 (Guillaume Paquerod).

61. Enquête Payerne (1420), Wirz, *Moignes*, 218 (Jaquet Nardin), 220 (Jean Girard), 230 (Guillaume Paquerod).

62. Enquête Payerne (1420), Wirz, *Moignes*, 187 (Jaquet Langue-de-Bœuf): “neminem alium dominum exprimendo,” which nonetheless is reminiscent of the Vulgate only in terms of content, not in terms of its phrasing.

63. Enquête Payerne (1420), Wirz, *Moignes*, 270 (Guillaume Bouczanet).

64. Enquête Payerne (1420), Wirz, *Moignes*, 202 (Gauchet de Citurno), 204 (Pierre Willero), 220 (Jean Girard), 226 (Jean Bavoux), 230 (Guillaume Paquerod), 242f. (Mermet Chambret), 245 (Jaquet Bussy), 246 (Jean Colondel), 270 (Guillaume Bouczanet), 271 (Guillaume Ponterousa), 288 (Jaquet Thomas).

65. Enquête Payerne (1420), Wirz, *Moignes*, 187 (Jaquet Langue-de-Bœuf), 208 (Etienne Corder), 210 (Henri Pudraul), 228 (Pierre Bretonnière), 230 (Guillaume Paquerod), 237 (Mermet Perriar), 241 (Jaquet Pictet), 260 (Jean Perroctet), 288 (Jaquet Thomas).

66. Enquête Payerne (1420), Wirz, *Moignes*, 210 (Henri Pudraul), 234 (Girard Gellex), 237 (Mermet Perriar), 241 (Jaquet Pictet), 260 (Jean Perroctet), 271 (Guillaume Ponterousa), 288 (Jaquet Thomas).

67. Enquête Payerne (1420), Wirz, *Moignes*, 208 (Etienne Corder), 210 (Henri Pudraul), 220 (Jean Girard), 228 (Pierre Bretonnière), 230 (Guillaume Paquerod), 234 (Girard Gellex), 252 (Jean Cagniar), 271 (Guillaume Ponterousa).

68. Enquête Payerne (1420), Wirz, *Moignes*, 242 (Mermet Chambret).

69. Enquête Payerne (1420), Wirz, *Moignes*, 187 (Jaquet Langue-de-Bœuf), 230 (Guillaume Paquerod), 252 (Jean Cagniar).

70. Enquête Payerne (1420), Wirz, *Moignes*, e.g. 187 (Jaquet Langue-de-Bœuf), 230 (Guillaume Paquerod), 252 (Jean Cagniar).

71. Enquête Payerne (1420), Wirz, *Moignes*, 270 (Guillaume Bouczanet); see 208 (Etienne Corder), 210 (Henri Pudraul), 218 (Jaquet Nardin), 270 (Guillaume Bouczanet).

72. Enquête Payerne (1420), Wirz, *Moignes*, 204 (Pierre Willero, dit Mouro), 211 (Nicod Bonnet), 220 (Jean Girard), 228 (Pierre Bretonnière), 229 (Guillaume Paquerod), 237 (Mermet Perriar), 271 (Guillaume Ponterousa).

73. See in this regard Enquête Erlach (1403) AST Corte 12 pq. 9 (Cerlier) Nr. 5; Kundschaft Rüeggisberg (ca. 1330) FRB 5:772–77 Nr. 730; Kundschaft Pieterlen (1373) FRB 9:359–71 Nr. 799.

74. For criticisms with further bibliography, see Fried, *Schleier*, 208–22; Bäuml, “Texts.”

75. In this version the oath ran, “tenetur iurare ... procurare commodum domini et evitare eius incommodum iuraque eiusdem et prohibitiones observare cum pariter dicti domini prioris et comunitatis”; Notariatsinstrument Turin (ca. 1421) AST Corte Protocolli Ducali 71 fol. 69r.

76. Enquête Payerne (1420), Wirz, *Moignes*, 218 (Jaquet Nardin).

77. Enquête Vaux-et-Chantegrue (1432) ACV Ad Nr. 25.

78. Such statements were made not simply by peasants but also, and primarily, by the contemporary holder of the office “juge et gouverneur” for the priory in that place: Enquête Vaux-et-Chantegrue (1432) ACV Ad Nr. 25 fol. 22v (Jean Mayeur), 51r (Jehan de Domperie). Ferner: 26v (Guyot Charpillat), 37r (Girard le Boiteux), 66r (Cyprien Robert), 68v (Perron Gonger), 72r (Aymon Pouget), 77v (Jean Meiget), 83r (Jehan Burgy), 86v (Jehan Fornaigedu), 92rf. (Besançon Willalmin).

79. For especially precise formulations of the regulation in abstract form, see Enquête Vaux-et-Chantegrue (1432) ACV Ad Nr. 25 fols. 43r (Jaquet Fou), 57r–58r (Vuillemin Burnet), 63v (Jehan de Lac-Dampvaulthier), 72r (Aymon Pugnet).

80. Enquêtes Chalon (1470/71) SDVD Vol. A1:458: “Interrogatus ... quomodo debet prestari talis promissio, dicit quod aliquando super evangelis Dei, aliquando super manu

notarii recipientis talem donacionem, sed si res fuerit magne importancie, videtur eidem testi quod debeat prestari promissio super euvangelii Dei, quoniam notarii in registrando et glossando instrumenta dicunt semper Super sanctis Dei evangeliiis est quod non fuerit prestitum iuramentum nisi super eorum manu” (Udriod Guilly).

81. Kundschaft Hilterfingen (ca. 1312) FRB 5:55; Enquête Oron (1360) ACV IB 56 Nr. 71 (1360).

82. Enquête Romainmôtier (1263) MDR 1.3:558; Kundschaft Rüeggisberg (ca. 1330) FRB 5:777 Nr. 730; Kundschaft Schwamendingen (1344) StAZ C I Nr. 2996; Kundschaft Amsoldingen (1389) FRB 10:515 Nr. 1090; Kundschaft Ringgenberg (1303) FRB 4:140, 147 Nr. 117; Kundschaft Hilterfingen (ca. 1312) FRB 5:46 Nr. 34; Urkunde Rue (1270) ACV IB 55 Nr. 36.

83. Kundschaft Brugg (1452) StAB A I 453a fol. 134f. “Item do seit Frenkli er hette vom alten Effinger gehört, das der in sinem tod bett rette und das uff sin jungste fart neme.” Cf. Kundschaft Hilterfingen (ca. 1312) FRB 5:55: “dicit se scire a patre suo, qui eo vocato in articulo mortis, sibi dixit ista verba” (C. dictus Hurni) and 48: “Et dum esset in agone, interfuit iste testis, et vidit at audivit quod questium fuit ab eo ... et hoc dixit per mortem sibi incumbentem” (Uolricus dictus Buchenzo); see also p. 79; Enquête Evian (1272) ACV IB 73 Nr. 102.

84. Enquête Oron (1360) ACV IB 56 Nr. 171; Urkunde Rue (1270) ACV IB 55 Nr. 36; Enquête Bursins (1374) ACV C VIIa Nr. 404 fol. 1r.

85. Kundschaft Bülach (ca. 1430) STAZ A 97.2 (Bülach) Nr. 7 and 8 fol. 1r; Kundschaft Emmenbrücke (1437) Marchal, “Meisterli,” 524.

86. Enquête Villars (1446) ACV C IV Nr. 460. The people named included fol. 2r (Petrus Maalsalvier), 4v (Mermetus Michio), 8v (Stephanus Michio); for longer episodes see 1v (Johannes Clauso), 4r (Mermetus Tuppin), 5v (Aymonetus Periez), 10r (Vuillermus Rastel and Johannes Pitie), 10v (Dominus Henricus Pappam, Presbyter).

87. Enquête Villars (1446) ACV C IV Nr. 460 fol. 5r: “eundo a Villario Sancte Crucis tendens apud May qui fuerunt versus dictum rivum de Pontisel tunc ipse Girardus douz Crestelliet dixit: ‘maledicatur qui traxit a loco isto unum vallum feri, quia non fuit adhuc tres anni quod erat ibidem et faciebat differentiam trium dominorum, videlicet de Cossonay, Lausanne et Exchallens’” (Johannes Guibaux); see 7v (Bisuntius Bessar) for a second version of this episode.

88. Enquête Villars (1446) ACV C IV Nr. 460 fol. 1vf.: “sibi dictum fuit per aliquos, ‘si vadas Lausanne tu manebis, quia offendisti penes dominium Lausanne.’ Et tunc reversus fuit currum suum et illum duxit apud Voufflens villam, nec ivit postea Lausanne” (Johannes Clauso).

89. Kundschaft Aeschi (1478) StAB Urkunden F Interlaken 1478.10.26.

90. Algazi, “Blick”; Marchal, “Meisterli”; Marchal, “Mémoire”; Marchal, “Memoria,” 289–320.

91. For similar determinations, see Fried, *Schleier*, 174; Trossbach, “Baur,” 236–38.

92. Kundschaft Ringgenberg (1303) FRB 4:145 Nr. 117: “Et dicit quod habet bis quinquaginta annos, et tamen credit se non habere centum annos” (Heinrich Unkande).

93. “Burchardus ... est canus [gray] in barba, sed nescit etatem suam.” Of others it is said: “incipit canescere in barba,” “canescit,” “est in parte,” or “totus canus in barba.” Kundschaft Ringgenberg (1303) FRB 4:145–47 Nr. 117 (of Werner Hanfla, Heinrich Wisse, Walter Endine, Konrad Stein, Walter im Tenne, Friedrich usirm Kienholtz, H. Rot).

94. “[N]imis antiquum factum”; Kundschaft Hilterfingen (ca. 1312) FRB 5:47f. Nr. 34 (Walter Krenzing), 53 (R. von Eichholz).

95. Kundschaft Hilterfingen (ca. 1312) FRB 5:43f. Nr. 34 (Werner von Basel, Chorherr von Interlaken), 45 (Heinrich Rudentz, Chorherr von Interlaken). A “*minister*” of the the cloister likewise traced the possessions of the lords of Eschenbach to the lords of Oberhofen, but he said that one could no longer know through which relationships and people this succession had passed; p. 52 (Walter Buchser).

96. Kundschaft Hilterfingen (ca. 1312) FRB 5:66 Nr. 34 (H. von Amsoldingen), 68 (Konrad Sprangli), 69 (Johannes Kaldschmid), 70 (Walterus de Ansoltingen), 80 (Ulrich Chorherr von Zurzach). The older regional histories had understood the three narratives until then as fragments of a single story that is coherent and reconcilable with fact, an assumption against which several objections can be raised; see Teuscher, “Herr,” 206–9.

97. Teuscher, “Herr.”

98. Urkunde Interlaken (1137) FRB 1:405 Nr. 9.

99. Kundschaft Emmenbrücke (1437), Marchal, “Meisterli,” 523–25. “Item er redet fu`rbasser, dz er habe hoeren sagen, das einer vorziten uff der alten Emmenbrugg gienge wider und fu`r. Des keme einr gan, hiesse Meisterli, und sprech zuo im: ‘Wes gästdu hie suochen? Hast neiswz verlorn?’ Da antwurte er im: ‘Mir hät langzit getrömt, ich sölle uff Emmenbrugg ein hafn mit gelt vinden. Nu han ich nie gewisset, wo Emmenbrugg ist gesin, wont dz ich ze Lucern bin hargewist, hie sige Emmenbrugg.’ Da sprech aber dz Meisterli: ‘Ee, du bist ein Narr, dz du dich daran u`t kerest! Mir hett ouch dik und vil getrömt, ich sölte gen Switz gän in des mans hus’—und nampete den unwu`ssent, der uff der brugg gieng und da suocht—‘und sölte da hinder desselben mannes wielstein suochen. Da funde ich ein hafn mit pfenningen. Aber ich kam noch nie dar.’ Also kerte derselb man heim gen Switz und suochte uff die red hinder sinem wielstein und funde ouch da ein hafn mit den pfenningen.”

100. Kundschaft Kölliken (15th c.) StAAG Urkunden Lenzburg 65 Bl. 2 (excerpted and published in RQAG 2.1:509–15). “Dis ist die kuntschaft von Koelliken. [...] Denne spricht Ruedi Zeglinger ouch, das er von sinen vordern gehoert habe, das einer kam geluiffen gen Koellikon in des wirtes hus und sprach zuo der wirtin: gend mir gnuog zuo essen; also be`tte er die wirtin zuo lest: machent mir verlorni eyer. Da sprach die wirtin zuo irem eman: der wil verlorne eyer, ich kan si nit machen. Da antwurt er: nym eyer und toppel si. Und nam aber er stro` und hacket das und namen und taetent das in ein pfannen und buochentz. Da im die wirtin das gab, da ward er vast toben, und da leit der wirt ein sparren in der tuere ring und ging nach sinen nachburen. Da nuo die kamen, da ging der wirt hinin und sprach: was tobest? Da kompt gar vil luitten; weistu uit uff dich, so mach dich enweg. Und also sprach er: ja ich han nit geta`n dann ein ross verstoln, das stat noch da an eim hage. Also erfart inn der wirt; wann er noch nieman wuist nit darumb, und ward gevangen zuo Koellikon im dorff und ward ze Muchen erhenckt.”

101. Marchal, “Meisterli,” 528–31.

102. Thompson, *Motif-Index*, 5:92. See the examples in Bolte and Polivka, *Anmerkungen*, 2:412–14.

103. See, e.g., Kundschaft Hilterfingen (ca. 1312) FRB 5:47 Nr. 34 (Johannes de Erlach, Walterus dictus Kenzing), 52 (Walterus dictus Buchser), 55 (C. dictus Hurni).

104. See, e.g., Kundschaft Riedburg (1463) StAB A I 453a fol. 203r–205r.

105. Kundschaften Leissigen and Interlaken (1478) StAB Urkunden F Interlaken 1478.10.31.

106. Kundschaft Heimberg (1494) RQBE 2.4:101–9 Nr. 59 (1494), at 102 (reference to “blind Roten who thinks himself to be a hundred and thirty years old” [“blinden Roten, der sich hundert and drissig jare besinte”]); 103 (reference to “Matzisberg, who was a hundred years old” [“Matzisberg, der hundert jar alt were”]); 103 (reference to a grandfather, who remembered 120 years).

107. See earlier in this chapter; on the concept of the “shallow past” (“seichten Vergangenheit”), see Algazi, “Blick.”

108. Enquête Fief Blonay (1433) ACV Af 11 fol. 43r (Margereta relicta), 22v, 23v (Johanes Chalini), 51r (Petrus Tronery), 76r (Johannes Chompardi), 107r (Cappellanus Aymo).

109. Enquête Fief Blonay (1433) ACV Af 11 fol. 10vf. (Guido de Crosernes), see 5r (Roletus Giglard), 123v (Dominus Johannes de Albona), see also 13v (Franciscus de Coionay), 33v (Johannes Pepini), 37v (Mermetus Gogenet), 76r (Johannes Chompardi).

110. Enquête Aubonne (1437) SDVD Vol. A1 (in several of those named above): 29

(Johannes Landrici), 47 (Anthonius Musiti), 32 (Johannes Ioliveti). Enquête Gruyère (1439) SDVD Vol. A1:127. Enquêtes Chalon (1470/71) SDVD Vol. A1:413: “consuetudo de qua deposuit est ab eterno” (Jean de Montrichier).

111. Enquêtes Chalon (1470/71) SDVD Vol. A1:316f.

CHAPTER 4

1. Sablonier et al., *Fällanden*.

2. He was especially blunt about this, for example, in letters: Oechsli, *Briefwechsel*, 126–28; Grimm, *Poesie*.

3. Werkmüller, *Aufkommen*, 146–49; Patzelt, *Entstehung*, 67–74; Müller, *Offnungen*, 35f.

4. The following offer systematic surveys of the scholarly literature: Rösener, “Dinggenossenschaft”; Werkmüller, “Weistümer”; Werkmüller, *Aufkommen*; Schmitt, *Territorialstaat*, 26–34; Spiess, *Einleitung*; Blickle, *Rechtsquellen*.

5. On Weistümer as a transitional phenomenon between oral/traditional and written/modern systems of organization, see Kroeschell, *Rechtsgeschichte*, 2:127–29; BühlerReimann, *Gewohnheit*; Holenstein, *Huldigung*, 198–216.

6. Practically all the old research assumes this; recent examples are provided by Rösener, “Dinggenossenschaft”; Algazi, “Blick”; Toch, “Asking.” See, in contrast, Morsel, “Prélèvement,” 160–62; Spiess, “Einleitung,” 6f.; as well as a few older works, such as Patzelt, *Entstehung*, 32–34, 37f.; Perrin, “Chartes de franchises et rapports de droits en Lorraine.”

7. See Ch. 1.

8. Important stages of this discussion are provided by the considerations in Patzelt, “Grundherrschaft”; Patzelt, *Entstehung*, 72–91; Kollnig, *Weistümer*, 38f.; Perrin, *Recherches*, 675–90; Perrin, “Chartes de franchises et rapports de droits en Lorraine,” 16–20; Eder, *Weistümer*; Rösener, “Dinggenossenschaft,” 64–68.

9. Summary descriptions of these discussions include Rösener, “Dinggenossenschaft,” 68–73; Spiess, “Einleitung”; Burmeister, “Rechtsfindung”; Brunner, *Land*, 347.

10. On this point see the seminal reflections by Hildbrand, *Quellenkritik*; Sablonier, “Schriftlichkeit”; Sablonier, “Verschriftlichung.”

11. See Spiess, “Einleitung,” 1–7, with further bibliography.

12. Grimm, *Weistümer*. In it, Grimm’s concept of “Weistum” proves to be very broad; he edited records that in part were only vaguely reminiscent of Weistümer for localities in the following lordships: the Zürich Grossmünster college—1:5 (Högg), 4:295f. (Schwamendingen), 302–4 (Stettbach), 322–31 (Rengg, Fluntern, Albsrieden, Rüfers, Rüslikon, Meilen); the bishopric of Lausanne—5:1–9 (Lausanne, Crans, SaintPrex, Essertines, Dommartin), 14–23 (Lucens, Pully, Avenches, Faoug); the priory of Romainmôtier—4:455–59 (Romainmôtier), 5:9–14 (Apples). Several of the Weistümer of the Zürich Grossmünster college are among the earliest edited rural legal sources for Switzerland; one was even chosen as the prototype edition for the collection of Swiss legal sources: Zürcherische Rechtsquellen; Rechtsquellen von Högg.

13. This is obvious from a glance at the editions listed in the bibliography.

14. Edition with commentary: MDR 3.3.

15. Grimm, *Weistümer*, 5:2–9.

16. Just such documents are represented quite plentifully in the cartulary of the chapter. A few of the numerous examples include MDR 3.3:122f. Nr. 89 (1225 agreement with the *villicus* of Essertines), 125 Nr. 92 (1235 *homagium* of the *Meier* of Essertines), 155 Nr. 142 (1219 *homagium* of the *villicus* of Dommartin), 162 Nr. 152 (dispute settlement between the chapter and the *Meier* of Dommartin), 258 Nr. 289 (1228 charter of homage of the *villicus* of Epalignes), and many more.

17. Plaict Romainmôtier (1266) SDVD Vol. B2:375–78 Nr. 343; Öffnung Högg (1338) (Latin version) Statutenbücher, 149–54; Öffnungen Birmensdorf (before 1350, two versions) RQZH 1.2:20–38; Öffnung des Klosters Engelberg für die Höfe im Aargau und Zürichgau

(14th c.) StA Engelberg D1 edited in RQAG 2.1:157–59 Nr. I.2 und Weistümer 1:1f.

18. From the turn of the fifteenth century, scattered Weistümer appeared that were divided by titles into individual chapters that are sometimes devoted to the rights and obligations of a single right holder, such as the commune as a totality of the dependents or other sharers in the lordship. Thus in the declaration record (Weistum) for the village of Hegi near Zürich, subject to the landlordship of the Grossmünster college of canons, there are sections about “the provost’s rights” (“des brobsts recht”), “the steward’s rights” (“des vogts recht”), “the commune’s rights” (“der gemeind recht”), and the “canons’ rights” (“chorherren recht”); Offnung Hegi (1396/1518), Kläui, *Geschichte*, 356–61. For similar examples, see Offnung Kölliken (1414) RQAG 2.1:499–509; Offnung Berg am Irchel (15th c.) RQZH 1.1:486–97; Offnung Breite-Hakab (1439) RQZH 1.1:137–42 Nr. 2 and 3 (one document, but divided into two in the edition).

19. Recognitiones (early 13th c.) MDR 3.3:425, 426, 428 (Crans), 282 (Saint-Prex).

20. Recognitiones Dommartin (1230) MDR 3.3:280 Nr. 195. One also suspects an immediate cause for the gathering in Crans. There, the office of the local cellarer, which was newly filled, had previously been filled for years by a cleric. Accordingly there are laws mentioned that Petrus, “sacerdas et villicus antiquitus,” had already approved once. This Petrus is probably the same “Petrus, capellanus de Crant, qui villicus est” who had already been mentioned in an older part of the document. Recognitiones Crans (1212) MDR 3.3:424–29 Nrs. 493–95.

21. Recognitiones Saint-Prex (1221) MDR 3.3:195 Nr. 195, 283 Nr. 319.

22. Perrin, *Recherches*, 685–90; Perrin, “Chartes de franchises et rapports de droits en Lorraine,” 27.

23. On this differentiation, see also Morsel, “Prélèvement,” 185f. On agricultural land lists, see Sablonier, “Verschriftlichung,” 92–120; Egloff, “Urbar”; Gelting, “Hommes”; Ott, “Probleme.”

24. Urkunde Maraçon (1297 im Vidimus von 1444) ACV IB 55 Nr. 56; Extentes Dommartin (1317) ACV Ac 27 bes. fol. 16r., 40r. On this document, see also Rück, “Registres,” 178.

25. In fact, it is significant that documents of the two types were often later preserved together in copybooks, and that supplementary notices similar to agricultural land lists were appended to this or that Weistum. But as a rule, entries can be clearly separated from one another on stylistic grounds and through details about their different circumstances of composition. Examples of borrowing from Weistümer—clearly marked as freestanding documents—in agricultural land list books are provided by, for example, Offnungen Erlinsbach (1331, 1349 and 1432) RQAG 2.2/2:144–47, 156; Weistum Aegst-Borsikon-Breitmatt (1412) RQZH 1.1:58–63; Vogtweistum Weinigen (early 15th c.) StAZ A 97.7 Nr. 18 (after a thick line that is drawn across the entire width of the page); Hallwiler Seerecht (1419) RQAG 2.1:163–69. On this point, see Morsel, “Prélèvement,” 162–71; Perrin, “Chartes de franchises et rapports de droits en Lorraine,” 27.

26. Not atypical but particularly significant in this regard is the appendix to the collection of Swiss legal sources, in which the earliest of the volumes devoted to rural areas is simply a volume of Weistümer (RQZH 1.1–2 [1910]), while agricultural land lists from the same region were the object of a separate project: Urbare und Rödel.

27. This is a proposal by Morsel, “Prélèvement,” 186–88.

28. Spiess, “Gesellschaft”; Genicot, *Communities*.

29. Morsel, “Prélèvement,” 155–60; Gilissen, “Pays,” 306f.; Perrin, “Chartes de franchises et rapports de droits en Lorraine,” esp. p. 29f.; Werkmüller, *Aufkommen*, 156f.

30. See, for example, the results of the indexing by Bühler-Reimann, *Gewohnheitsrecht und Landesherrschaft*; RQZH 1.1–2.

31. See below, note 50.

32. Among older examples are Offnung der Landgrafschaft Buchsgau (1323) FRB 5:314 Nr. 268; Offnung des Twinghofs Holderbank (late 14th c.) RQAG 2.1:657–64. Almost as early is Hallwiler Seerecht (1414) RQAG 2.1:163–69.

33. See, e.g., Öffnung Oberwinterthur (1472), Kläui, *Geschichte*, 347–52; Altstetten (1429) RQZH 1.1:268–85; Öffnung Dübendorf (15th c.) RQZH 1.1:445–59; Öffnung Dietlikon-Rieden (1420) RQZH 1.2:394–99; Öffnung Weiningen (15th c.) StAZ A 97.7 Nr. 18; Öffnung Wiedikon (15th c.) Weisthümer 4:286–90.

34. Plaid Vautravers (1302), Glaenger, “Plaid,” 46; Plaid Lugnorre (Vully) (1398), Ducrest, “Esquisse,” 29 (“Edition” in modernized language); Plaid de St. Maurice, Le Landeron (1493) SDNE 1:75–81 Nr. 24; “Us et coutumes” Béroche (1398) SDNE 1:72 Nr. 22 (Regest), edited in Pierrehumbert, “Us,” 61–72, 84–96, 125–40, 160–81.

35. See Ch. 5 as well as Poudret, “Rôle.” The same is true for the abbey of St. Gall, located far from the Savoyard sphere of influence, which initiated the collection and renewal of Weistum-like documents specifically as an element of the systematization of their territorial administration around the middle of the fifteenth century; see Müller, “Ergebnisse.”

36. For the city of Zürich, see, e.g., Öffnung Altstetten (1430 revised edition) RQZH 1.1:268–85 Nr. 4; see further Grimm, *Weisthümer* 4:297–300; Öffnung der Freien der Grafschaft Kyburg (1433) StAZ A 98.1; Öffnung von Unter-Dürnten (1480) RQZH 1.2:487 Nr. 3; Vogtöffnung Meilen (15th c.) Zürcherische Rechtsquellen, 88–90.

37. Examples of this are provided, for instance, by agreements between landlords and stewards: Urkunden Mollens (1267 and 1285) AST 12 pq. 27 (Mollens) Nr. 1 (1265) and ACV IB 217 Nr. 22a and b, contract of the three shared lords of Gernzensee (1299) FRB 3:730f. Nr. 723 or that between the holder of the office of *Meier* of Lucens and the totality of the dependents in that place (1375) ACV C IV Nr. 385.

38. RQBE 2.6:124–27 Nr. 90 (Grindelwald 1404), 269 Nr. 160 (Brienz 1400), 113–24 Nr. 88f. (Interlaken 1404).

39. Recognitiones Avenches (1259) SDVD Vol. B1:590f. Nr. 354 and (1338), p. 593 Nr. 356; Recognitiones La Roche (1438) MDR 1.27:246–50 Nr. 87, mentioned in SDVD Vol. B1:610 Nr. 367.

40. See below, Ch. 5, the example of Romainmôtier. The St. Gall “Öffnungen” are closer to this type than to Weistümer in the narrow sense; they are the object of Müller, *Öffnungen*. See Holenstein, *Huldigung*.

41. Recent articles on the rich literature of city law documents are in Stercken, “Kleinstadt”; Kroeschell, “Stadtrecht”; Riguadière, “Chartes”; Dilcher, “Zukunft”; Anex-Cabanis, “Franchises”; Ciardo and Morerod, “Chartes”; Mariotte-Löber, *Ville*; Perrin, “France.”

42. Rennefahrt, “Beitrag”; Bader, *Schiedsverfahren*; Usteri, *Schiedsgericht*; Usteri, *Schiedsurkunden*. Somewhat random examples of arbitration hearing charters, which can be chosen from a multitude, are listed below according to different formal conflict constellations. On conflicts between lords—Frutigen (1301) FRB 4:75f. Nr. 67; Payerne (1350) ACV C Va Nr. 908; Romainmôtier (1388) ACV C VIIa Nr. 433. On conflicts between lordship and dependents—Romainmôtier (1263) MDR 1.3:557–59; Interlaken (1296) FRB 3:644f. Nr. 654; Frienisberg (1303) FRB 4:156f. Nr. 126; Schinznach (1375 and 1425) RQAG 2.2:192–98. On conflicts between lords and officials—Rüeggisberg (1275) FRB 3:151f. Nr. 157; Lucens (1335) SDVD Vol. B1:642–44 Nr. 394. On conflicts between dependents—Amsoldingen (1320) FRB 5:188f. Nr. 137.

43. On this type of court document (*hofrechtliche Aufzeichnungen*), see Schulz, “Hofrecht”; Rösener, “Hofrechte”; Perrin, *Recherches*, 679–85 (described as “*coutumiers*”); Müller, *Öffnungen*, 25. Spiess describes such documents as being “in Weistum form” (“*Form-weistümer*”), an identification that can only be excused so far as a custom is actually identifiable in a declaration; see Spiess, “Einleitung,” 4–7. Such records are extant from the High Middle Ages, mostly in the form of entries in interest books and cartularies. From the region under examination, a prominent example from the thirteenth century is extant in the form of a freestanding document: Hofrecht Murbach (13th c.) RQAG 2.1:655f. Nr. 284; see further Weisthümer 4:367f.; Hofrecht Ferrach (1238) ZUB 2:18f. Nr. 517.

44. For examples, see the following section, “Processes of Production: The Zürich

45. Urkunde Zürich (1430) RQZH 1.1:285–87 Nr. 5; see the Weistum in the same, 268–82 Nr. 4.

46. Urkunde Embrach (1539) RQZH 1.1:486f. Nr. 6.

47. Öffnung Murgeten (1409.7.26) RQBE 1.3:412–14 Nr. 127k.1; Konolfingen (1409.8.26) RQBE 1.3:414 Nr. 127k only mentioned; edited in RQBE 2.4:19–23 Nr. 13; Zollikofen (1409.9.12) RQBE 1.3:414–18 Nr. 127k.3.

48. Statutenbücher, 160–63.

49. See the stipulations of the document of forfeiture for Meilen (1424) StAZ C I Nr. 3098.

50. The “steward’s declaration” (“*Vogtoffnung*”) Zürcherische Rechtsquellen, 88–90; the “provost’s declaration” (“*Propstoffnung*”) StAZ G I Nr. 102 fol. 11v–14v. For similar examples, see Öffnung Weiningen (early 15th c.) StAZ A 97.7 Nr. 18; Öffnung Adlikon (early 14th c. and mid-15th c.) RQZH 1.1:7–11 Nrs. 1 and 2.

51. Öffnung Altstetten (after 1430) RQZH 1.1:268–82 Nr. 4. That these could not have been created in 1429, to which they were later back-dated, is shown by the charter regarding the acquisition of lordship rights in 1432, RQZH 1.1:287 Nr. 6. The old version is not included but was described in a charter from 1430, which also implies that it was actually recorded in 1429; RQZH 1.1:285–87 Nr. 5. For a similar example, see Öffnungen Erlinsbach (first half of 14th c. and late 14th–early 15th c.) RQAG 2.2:144–47 Nr. 76 and 152–56 Nr. 79.

52. See Ch. 1.

53. Similar discoveries were made by Müller, *Öffnungen*, 117, 172. One exception is provided by Öffnung Unter-Dürnten (1480) RQZH 1.2:487–500. This contains a passage on inheritance law, explicitly phrased as an adjudication and statute of the council of the city of Zürich, which held the local stewardship rights. A few Weistümer for localities that were subject to the canon chapter of Embrach mention in their preambles charters that concern the same place without identifying these as sources of passages in the Weistum: Öffnung Hegi (1396), Kläui, *Geschichte*, 356–60; Öffnung Berg am Irchel (15th c.) RQZH 1.1:486–97.

54. Schäfer, *Vokalität*; Bäuml, “Mündlichkeit”; Koch and Oesterreicher, “Sprache.”

55. Codices 10a and 10b, Zentralbibliothek Zürich. Edition and commentary in Statutenbücher.

56. Statutenbücher, 147–49.

57. Statutenbücher, 149–50.

58. Statutenbücher, 159: “Item in Rùfers preopsitus Thuricensis habet omnem iurisdicionem ut in Rieden et iudicare habet ut ibidem et in Rüsclikon et de custodiis segetum et vitium idem iuris est in omnibus curtibus et de censibus solvendis, pignoribus dandis, vendendis et possessionibus alienandis ac iudiciis temporibus placitorum sollempniter exercendis.” On this point see similar phrases in the stipulations for Albisrieden, Rüsclikon, and Meilen: Statutenbücher, 156–58, 159, 161.

59. Statutenbücher, 150 (Högg), 154f. (Fluntern), 157 (Albisrieden), 159 (Rüsclikon), 159f. (Rüfers), 160 (Meilen), 163 (Schwamendingen), see p. 13 (Pflichtenheft).

60. Statutenbücher, 14; see also p. 158.

61. This was often translated back and forth between Latin and German. Apparently a Latin appendix to the cellarer’s official agricultural land list provided the precedent for a German version of this obligation book from 1333: Urbare und Rödel, 120, 197f. The German version then provided the basis for a Latin entry regarding the obligations of the cellarer in the statute books, from which the passages in the village legal records were taken. Statutenbücher, 53–57 (“*De officio cellareri*”), 54; see also pp. 151, 158.

62. Urkunde Albisrieden (1332) UBZ 11:333–35 Nr. 4432. The immediate precedent was probably the copybook of the Zürich Grossmünster college, in which is found a copy of the charter: StAZ G I Nr. 96 fol. 150; see Statutenbücher, 158: “Item villani habere debent accessum et egressum cum peccoribus suis in die Wilden Huobe et econverso dominus huobe cum suis peccoribus ad pascua ville tempore debito. Et dominus huobe pacificare debet segetes cum lignis sepium, si ibi satis habet; sin autem incidere debet in ligno

necessaria ad faciendum sepes, sicut alter villanus.”

63. It is also precisely these stipulations—together with those regarding the obligations of the local steward to the college—that were emphasized much more often than other passages with pointing hands or the comment “nota” written in later hands in the margins. Contained in Codices 10a and b in the Zentralbibliothek Zürich, but here listed according to the edition, which only marks some of the notations: Statutenbücher, 150 (Obligations of the steward), 153 (Selection of the Forester), 156 (Revenues of the Forester), 158 (Dues of the *Meier*), 158 (Obligations of the Forester), 158 (Selection of the Forester), 162 (Obligations of the Steward), 167 (Selection of the Forester).

64. Eugster, “Adel”; Eugster, “Entwicklung.” See also Largiadèr, “Anfänge.”

65. Hefte Grossmünster (15th c.) StAZ A 79.4 Nr. 11; G I Nr. 102; Ratsmanuale Zürich (1489) StAZ RM II Nr. 15:16. Later, abstracts from the records for the localities of Schwamendingen and Oberhusen were collected on a loose sheet that was preserved in the context of agreements regarding lordship rights: Blatt Zürich (ca. 1400) StAZ C II 10 Nr. 2270.

66. Offnungen (15th c.) StAZ G I Nr. 102 fol. 11v; G I Nr. 103 fol. 9r (Rüschlikon and Rüfers), 25v (Albisrieden); Zürcherische Rechtsquellen, 88f. (Meilen), 139 and 145 (Fluntern).

67. Öffnung Meilen (15th c.) STAZ G I Nr. 102 fol. 11v.

68. Öffnung Albisrieden (15th c.) STAZ G I Nr. 103 fol. 25v; see Zürcherische Rechtsquellen, 88f. (Öffnung Meilen), 139 (Öffnung Fluntern).

69. See, e.g., Eintrag Albisrieden (14th c.) Statutenbücher, 158, on the methods for penalizing peasants who had not paid their dues: “et circa pignora huiusmodi servari debet idem, quod in Hönga.” This rule, which was only referenced before, is integrated into the text in the German version. Öffnung Albisrieden (15th c.) StAZ G I Nr. 102 fol. 27v: “War ouch das yeman den andern ze Rieden pfandte, der sol die pfaender in den meyerhof antwurten und da lassen acht tag beliben. Und sind es aessende pfand, so sol man dem meyer sinen schaden vor allen dingen ablegen.” The insertion is a paraphrase of the Latin entry for Höngg (14th c.) Statutenbücher, 151: “Et eadem pignora debent servari per octo dies in curia villicatus sine prejudicio villici.” This phrasing, in turn, refers back to the cellarer’s official agricultural land list.

70. “... dass der meyer die simlen uf sinen rist setzet und ab der selben simlen an sinem knü sinem knecht ein morgenbrot abschnidet.” Öffnung Albisrieden (15th c.) StAZ G I Nr. 103 fol. 26v. See also the Latin version from the fourteenth century: Statutenbücher, 162. Entry for Albisrieden (14th c.) Statutenbücher, 158.

71. Öffnung Meilen (15th c.) StAZ G I Nr. 102 fol. 12v.

72. Grimm, *Poesie*; Oechsli, *Briefwechsel*, 126–28; Kollnig, *Weistümer*, 118–34; Perrin, “Chartes de franchises et rapports de droits en Lorraine,” 32f.

73. See, e.g., Zangger, “Wirtschaft,” 395f.

74. Öffnung Albisrieden (15th c.) StAZ G I Nr. 103 fol. 25v; Öffnung Fluntern (15th c.) Zürcherische Rechtsquellen, 142.

75. Ganz, *Beiträge*, 83–87f.; Urbare und Rödel, 200, 202, 204, 213. Very early on, people were mentioned among the jury at Fluntern who lived in the city and were probably citizens of it: see, e.g., Urkunde Zürich (1289) UBZ 6:48–50 Nr. 2067. And in 1420 the most important local office, that of the bailiff, was given to the urban citizen Niklaus Hämmerli; Urkunde Zürich (1420) StAZ G I Nr. 96 fol. 240v.

76. Zürcherische Rechtsquellen, 142, see pp. 140, 141, 144.

77. For an overview of the scholarly literature, see Poudret, “Rôle.”

78. Plaict Apples (1327) ACV VIIa Nrs. 363 and 272 (photos). In what follows, cited according to the newest edition: SDVD Vol. B2:419–24 Nr. 369, except for the passages that have these omissions. For the complete phrasing, see Cottier, *Abbaye*, 191 Nr. 3.

79. See also Verkaufsurkunde Apples (1328) ACV C VIIa Nr. 276; see the section on “Occasions” in this chapter.

80. Plaict Apples (1327) SDVD Vol. B2:419–24 Nr. 369.

81. See also Plaict Romainmôtier (1266) SDVD Vol. B2:375–78 Nr. 343 (marked A in what follows) and Plaict Apples (1327) SDVD Vol. B2:419–24 Nr. 369 (marked B). There are the following correspondences between the articles according to the numbering in the edition: B3(A3), B4 (A4), B5 (A5+6), B6 (A7), B7 (A8), B8 (A9), B10 (A13).

82. Plaict Apples (1327) SDVD Vol. B2:421 Nr. 369 § 3 “ut moris est,” § 5 Supplementation of the word *consuetudo* with the adjective *antiqua*.

83. Plaict Romainmôtier (1266) SDVD Vol. B2:375f. Nr. 343.

84. Plaict Lausanne (1368) ACV C Va Nr. 26/1, photographic reproduction in ACV C IV Nr. 364, Edition: SDVD Vol. B1:219–37 Nr. 190. See the overview of the scholarly literature in Anex-Cabanis, “Plaict,” 1; Poudret, *Coutumes*, 1:144. For more detail, see Teuscher, “Notiz.”

85. Anex-Cabanis, *Plaict*, 10f.; Anex-Cabanis, “Moyen Âge,” 89–93; Reymond, “Développement,” 99.

86. Plaict Lausanne (1468) SDVD Vol. B2:234 Nr. 190 § 155–72.

87. Urkunde Lausanne (1357) MDR 1.7:166. The stipulations appear once more, complete with parenthetical expressions in the French vernacular, in Plaict Lausanne (1368) SDVD Vol. B1:219–37 Nr. 190 and p. 227 § 82f.

88. This involved the fines for infractions of the regulations that were already established in the *recognitiones* for Avenches and appear again in the cartulary of the chapter of Lausanne as copies from the *recognitiones* from 1230 for Dommartin discussed in this chapter. See Recognitiones Dommartin (1230) (hereafter A), here cited from SDVD for the sake of the numbering of the articles, which makes comparison easier—SDVD Vol. B1:780 Nr. 559; Recognitiones Avenches (1338) (hereafter B) SDVD Vol. B1:593f. Nr. 356; Plaict Général Lausanne (1368) (hereafter C) SDVD Vol. B1:222f. Nr. 190. There are the following correspondences between the articles: A2 (first part) [B2+3, C30+31] and A2 (second part) [B7]; as well as A4 [B4+5, C32]. This dependency could, of course, arise from other, no longer extant precedents.

89. Recognitiones Lausanne (“1144”) SDVD Vol. B1:217–19 Nr. 188, further in, *Patrologia Latina* 188 Sp. 1284–86 (in French translation); MGH SS 24:775f.; Weisthümer 5:1f.

90. Morerod, “Franchises.”

91. Recognitiones Lausanne (“1144”) SDVD Vol. B1:218 Nr. 188 § 15.

92. Thus the fines that were from now on regulated in the *Plaict* were omitted: Recognitiones Lausanne (“1144”) SDVD Vol. B1:218 Nr. 188 § 10–13; see Plaict Lausanne (1368) SDVD Vol. B1:222f. Nr. 190 § 27–44, two points in the list of the regalia of the bishop (the *mensure* and *fenatores manifesti*) were also omitted; SDVD Vol. B1, 220 § 3.

93. Commentaire Lausanne (ca. 1430) ACV Bf 11, cited edition SDVD Vol. B1:239–349 Nr. 192. The older edition apparently reflects the structure of the commentary: MDR 1.7:314–477 Nr. 75.

94. Commentaire Lausanne (ca. 1430) SDVD Vol. B1:245–51 Nr. 192 § 6–14; see the concordance for the *Plaict* charter and its commentary in SDVD Vol. B1:240.

95. Commentaire Lausanne translation (ca. 1500) AVV bleu H13 fols. 14r–16v. Only the short translations of French legal terms that the Latin original contains were evidently not translated. I owe Yann Dahaoui many thanks for furnishing information about this document and providing a transcription.

96. Translation of the Plaict Lausanne (ca. 1500) AVV bleu H13 fol. 14r. “Du lieu ou se doit tenyr le plait general lesqueux y douient estre.” Accompanying information can be found in Commentaire Lausanne (ca. 1430) SDVD Vol. B1:245–51 Nr. 192 § 6–14.

97. On the controversy over the origins of the *placitum* of Lausanne, see Tappy, “Institutions,” 2f.; Poudret, “Procès,” 378; Poudret, “Rôle,” 179; Anex-Cabanis, “Plaict,” 9; Baud, *Plaict*, 177–82.

98. The oldest of such mentions include Recognitiones Lausanne (“1144”) SDVD Vol. B1:218 Nr. 188 § 18. Records of the Savoyard Bailli of Lausanne from c. 1300–1330 speak of a *placitum generale* that was scheduled to take place every two years, on which occasion the officials furnished the city artisans with a feast. The accounts list the holding of this court

for 1321, 1325 and 1327; AST Camerale Savoia Inv. 71 fol. 52 (Record 1. März 1321–4. April 1322), Inv. 69 fol. 5 (Record 3. Januar 1325–9. März 1328). Despite the normative statements about the biannual schedule, the records for 1329 and 1330 explicitly note the lack of the *placitum*, Inv. 69 fol. 5 (Record 10. März 1328–12. Juli 1329 and 13. Juli 1329–22. Januar 1330). I thank Jean-Daniel Morerod, who furnished me with transcriptions of these documents. Further supporting documents are discussed by Morerod, *Genèse*, 440 and Tappy, “Institutions,” 2f.

99. Mandat Lausanne (1457) MDR 1.7:166. On the *curia secularis*, see Morerod, *Genèse*, 381f.; Poudret, *Coutumes*, 1:155f. and 371–78; Tappy, “Institutions,” 6–13.

100. Plaict Lausanne (1368) SDVD Vol. B1:219f. and 236f. Nr. 190.

101. Poudret, *Coutumes*, 1:46.

102. The ambiguity is only increased by the stipulations of the *Plaict* charter. Here, on the one hand, it is mentioned that the laws of Lausanne can be changed or amended only by a declaration at a *placitum* with subsequent publication by the *curia secularis* (“*et non alias*”): Plaict Lausanne (1368) SDVD Vol. B1:222 Nr. 190 § 25. On the other hand, subsequent stipulations mandate the legislating power of the *curia secularis* itself, without reference to the *placitum*: SDVD Vol. B1:225 § 64, 68. On this point, see also Poudret, *Coutumes*, 1:147.

103. Poudret, “Procès.”

104. Commentaire Lausanne (ca. 1430) SDVD Vol. B1:246f. Nr. 192 (VII ad 18). Although the commentary states that there was no longer a steward at that time (246 [VII ad 7 et 8]), it again describes his duties at the *placitum* precisely: pp. 245f. (VI ad 6), 247f. (VII ad 7 and 8, VIII ad 18), 248 (IX ad 21), 249f. (XI ad 18), 250 (XII ad 22), 251 (XIII ad 18 and XIV ad 19).

105. Mandat Lausanne (15th c.) SDVD Vol. B1:438 Nr. 191. See Anex-Cabanis, “Plaict,” 15.

106. Urkunde Romainmôtier (1263) MDR 1.3:357–59.

107. Urkunden Apples (1285 and 1296) ACV C VIIa Nr. 187 and Nr. 201; charter Nr. 201 is edited in SDVD Vol. B2:417–19 Nr. 368.

108. Schiedsurkunde Apples (1331) ACV C VIIa Nr. 299.

109. Commentaire Romainmôtier (1490er) BCU F 991 fol. 62–73.

110. Recognitiones Romainmôtier (1497–99) SDVD Vol. B2:404–14 Nr. 366.

111. On the details of this course of action, see below, [Ch. 5](#).

112. Recognitiones Romainmôtier (1497–99) SDVD Vol. B2:404–14 Nr. 366.

113. See the notes to his edition of the *Recognitiones of Arducius*, which nonetheless can be found in a volume that first appeared after Grimm’s death: *Weisthümer* 5:1f.

CHAPTER 5

1. For the broader context of this incident, see Amiet, “Bauernunruhen”; Gröbner, *Geschenke*, esp. p. 175f.

2. Strafrechtliches Zeugenverhör (1513) StAB UP 52 Nr. 122, UP 53 Nrn. 69, 75. Extracts from other transcripts are reproduced in Lechner, “Nachklänge.”

3. Strafrechtliches Zeugenverhör (1513) StAB UP 53 Nr. 75 fol. 1v: “Uff das schlüge Bernhartt Sässeli vor an sin hertz und spräche: ich hab brief und sigel von des künigs anwäldten von Disjon. Und min herren die Eidtgenossen hätten im ein brief geschickt, wie er banckhartt und verretersch bösswicht mit verrettery und lügennen umbgieng, aber er wäre als warhafft als si, es wäre joch venner oder ho`ptlütt, vogt oder vögtly, darumb hätte er gu` t brief” (Mang Scholl). See also Lechner, “Nachklänge,” 132.

4. Especially rich observations of this sort are contained in Bresslau, *Handbuch*, 635–738.

5. See Introduction.

6. Vollrath, “Rechtstexte”; Weitzel, “Schriftlichkeit”; Clanchy, *Memory*, 253–327. On Weistümer specifically, see Prosser, *Rechtsaufzeichnungen*.

7. Keller, *Buch*.

8. E.g., Illich, *Vineyard*, with further bibliography; Rouse and Rouse, *Witnesses*.

9. See [Ch. 1](#).

10. Sablonier, “Schriftlichkeit”; Morsel, “Moyen Âge”; Keller, “Herrschersiegel”; Hildbrand, *Herrschaft*.

11. See, e.g., Chartier, *Culture*; Petrucci, *Writers*.

12. Examples of such discussions include Johanek, “Höfe”; Wenzel, *Hören*; Green, *Listening*; Lutz, *Liederblatt*; Bumke, *Kultur*; Bäuml and Rouse, “Roll.”

13. For example, four out of a total of ninety witnesses examined in Kundschaft Hilterfingen (ca. 1312) FRB 5:44, 46, 65, 77; four out of a total of twenty-five witnesses examined in Enquête Vaux-et-Chantegruie (1432) ACV Ad 25 fol. 23v, 34rf., 45v. And in one witness deposition that primarily concerned memories of a document, virtually only notables were examined as witnesses: Kundschaft Brugg (1452) StAB A I 453a fol. 134f. (Rudolf von Ringoltingen, Altschultheis von Bern; Hans Fränkli, Säckelmeister; Niklaus Fricker, Hofmeister zu Königsfelden; Ueli Greulich).

14. Franchises Payerne (1347) SDVD Vol. B2:213 Nr. 193 § 1–4, see further 220 § 43.

15. Enquête Payerne (1420), Wirz, *Moignes*, 170 Questions Nr. I–VI. See above, [Ch. 4](#).

16. See, e.g., Enquête Erlach (1399) AST Camerale Savoia Inv. 137 pq. 4 (Cerlier) fol. 12; Enquête Fief de Savoye Blonay (1433) ACV Af 11 fol. 45r: “prout vidit et legit contineri ipse loquente in quadam accensamentum ... eius avo materno factum per dominum quodam Nicodum de Blonay” (Johannes domicellus de Villarsel). Weistümer sometimes allowed for peasant dependents to receive deeds of tenure issued by the lordship: see, e.g., Offnung Brütten (14th/15th c.) RQZH 1.2:147–54; on the possession of pieces of legal writing among peasant producers, see also Sablonier, “Verschriftlichung,” 115.

17. Even very passing mentions of pieces of writing consist of such phrases as, in Kundschaft Brugg (1452) StAB A I 453a fol. 134f.: “er hab ein brief in sinen henden gehept” (Rudolf von Ringoltingen); in Urkunde Lausanne (1483) SDVD Vol. B1:458 Nr. 256: the documents “fuerunt exhibite, ostensa et producta”; and in Urkunde Vallorbe (1488) ACV C VIIa Nr. 942: the bearer had the documents “in manibus suis tenentes nobis exhiberunt legendum.”

18. See, e.g., Offnung Dättlikon (1454) RQZH 1.2:305–8 Nr. 1.

19. Offnung Holderbank (1470) RQAG 2.1:657 Nr. 285; see Urkunde Oberwinterthur (1490) StAZ C II 16 Nr. 454.

20. Klageschrift Bürger Lausanne (1482) AST Camerale Savoia Inv. 139 fol. 13, edited using a more recent copy in MDR 1.7:655.

21. Kundschaft Heimberg (1498) RQBE 2.4:107 Nr. 59. The expression is also found in chronicles: Berner Chronik, 11.

22. “... gesechen und geho`rt ... lesen einen gu`ten bermendin brief ordenlich besiglot, daran das ro`ssly stu`nde.” Kundschaft Brugg (1480) RQAG 1.2/2:6. See also p. 5 (Clewli Talhin).

23. Berner Chronik, 123f. This episode has been discussed in research literature from several points of view: Rauschert, “Inszenierung,” 174–78; Tremp-Utz, “Handfeste”; Strahm, *Handfeste*, 14f. My account broadly follows that of Rauschert, who shows how strongly the introduction of the Bern manuscript described by Justinger was focused on its materiality but scarcely addresses how this materiality served as the point of connection for the exposition of the document.

24. See the overview of the discussion in RQBE 1.1+2:35–39, and De Capitani, “Bern”; Blattmann, *Stadtrechte*, 1:27–30; Strahm, *Handfeste*.

25. RQBE 1.1+2:60; Strahm, *Chronist*.

26. Berner Handfeste (13th c.) RQBE 1.1+2:39f. On this problem, however, see Isenmann, “Gesetzgebung,” 52–94.

27. Urkunde Lausanne (1420) SDVD Vol. B1:498–500 Nr. 284.

28. Plaict Lausanne (1368) SDVD Vol. B1:225 Nr. 190 § 65.

29. In all probability, it involved the notarial instrument of Lausanne (1396) that is edited in MDR 1.34:494 Nr. 277c.

30. Urkunde Lausanne (1420) SDVD Vol. B1:498–500 Nr. 284.

31. For a critical discussion of older research, see Bedos-Rezak, "Identity," 1513f., and Bedos-Rezak, "Liturgies."

32. Clanchy, *Memory*, 308–17; Bresslau, *Handbuch*, 717–26; Ewald, *Siegelkunde*, 35–48, esp. p. 39.

33. Jungmann, *Missarum*, 1:504–5; Lentès, "Textus."

34. Jungmann, *Missarum*, 1:546f., 554–56; Dessi, "Prophétie."

35. Clanchy, *Memory*, 253–55.

36. Medieval literary scholarship has for a long time engaged critically with the concept of an exclusively diachronic development "from hearing to reading": Green, *Listening*; Bäuml, "Mündlichkeit."

37. See, for example, Bresslau, *Handbuch*, 149–84.

38. Primary examples of such studies are provided by Hildbrand, *Herrschaft*; Zangger, *Grundherrschaft*, 77–109. From a more comprehensive chronological and geographical perspective, see Vismann, *Akten*.

39. Enquêtes Chalon (1470/71) SDVD Vol. A1:307, 312. On the classification of questions in the broader context of legal disputes, see Poudret, "Enquêtes de Chalon," 111–16.

40. Enquêtes Chalon (1470/71) SDVD Vol. A1:359 (Pierre Martiginier), 381 (Jean de Cunat, nobilis), 439 (Guy Ceriat, nobilis), 488 (Pierre de Mont, nobilis), 496 (Pierre de Montagny), 506 (Pierre Aymonet, notarius), 519 (Jean Hugonet, notarius).

41. Enquêtes Chalon (1470/71) SDVD Vol. A1:359 (Pierre Martiginier), 421 (Jean de Furno), 450 (Jean Matillardo, nobilis), 459 (Udriod Guilly), 493 (Jacques Praz, notarius).

42. Enquêtes Chalon (1470/71) SDVD Vol. A1:438: "antiquo tempore non observabantur prout nec de presenti observantur alique solmpnitates in instrumentis ..., ymo de novo fuerint reperte ipse solempnitates per notarios se asubtiliantes in talibus" (Guy Cerjat); see 411 (Jean de Montrichier, nobilis).

43. Enquêtes Chalon (1470/71) SDVD Vol. A1:479 (Aymonet Pittet).

44. Enquêtes Chalon (1470/71) SDVD Vol. A1:385 (Jacques Guibert, notarius), 417 (Jean Pittet), 432 (Etienne Favre), 463 (Claude de la Cour, nobilis), 513 (Girard de Moudon). Nonetheless, a few held the view that their answers were not universally applicable but rather appropriate to the individual case: 421 (Etienne Montehrod), 445 (Jean Mistral).

45. Enquêtes Chalon (1470/71) SDVD Vol. A1:421f.: "Interrogatus an potuerit esse quod aliqua instrumenta in patria Vuaudi fuerint declarata nulla defectu solempnitates quod ipse testis nesciverit, dicit quod multa instrumenta possunt revocari propter subtilitates advocancium in dicta consuetudine et que quandoque non debent de consuetudine revocari, sed, sicut unus advocatus est subtilior altero, revocantur aut propter multitudinem colloqui aut propter tacurnitatem" (Jean de Furno).

46. Enquêtes Chalon (1470/71) SDVD Vol. A1:442 (Jean de Bolion, notarius), 249 (Henri Chastel), 474 (Jean Bellini, notarius); in agreement with these notaries were the noble Nicod de Clauso (p. 429) and the peasant Rolet Dauphin (p. 429).

47. Enquêtes Chalon (1470/71) SDVD Vol. A1:421 (Jean de Furno), 427 (Etienne Montherod), 438 (Guy Cerjat).

48. Coutaz, "Inventaire"; Rück, "Ordnung"; Rück, "Registres"; Rück, "Diskussion."

49. For focused discussions of the question of how documents acquired new dimensions of meaning through innovations in their preservation and organization, see Head, "Knowing"; Bedos-Rezak, "Liturgies."

50. Guyotjeanin, Morelle, and Parisse, eds., *Cartulaires*; Geary, *Phantoms*. For an overview of the extant examples from the region under examination, see Coutaz, "Inventaire," 105–11.

51. After the middle of the thirteenth century, in the western part of the region under study, noble lords had cartularies created for the first time, such as the extant cartulary of the Savoyards for the barony of Vaud (13th c.) AST Corte 12 pq. 1 (Vaud) Nr. 3, as well as that of the lords of Grandson, no longer extant; see Coutaz and Morerod, "Documentation," 412.

52. See Ch. 1.

53. Examples of this are provided in the holdings of the chapter of Lausanne: Dossier Lausanne (15th c.) ACV Va Nr. 157, contains a charter on the usage of forests in Dommartin and an undated witness deposition transcript, probably from shortly before 1300; Dossier Lausanne (14th c.?) ACV Va Nr. 157 (diverse charters from 1329 to 1347 with a witness deposition transcript from 1337 on the tithe right at Estavayer); Dossier Romainmôtier (15th c.) ACV C VIIa Nr. 469 (with pieces from the period 1355 to 1402 and a witness deposition transcript from 1413 on the tithe right at Apples).

54. Vidimus Enquête Blonay 1437 (1457) ACV IB 148 Nr. 263, edited in digest form in SDVD Vol. A1:87–97, though the details on the procedure for issuing the certified copy are omitted; Vidimus Enquête Grenet 1396 (1508) ACV C IV Nr. 430, short excerpts are edited in SDVD Vol. B1:176f. Nr. 168; also Vidimus Enquête Sevaz 1297 (1444) ACV IB 55 Nr. 56; Sammelband (early 16th c.?) ACV Ad 19. See Wirz, *Moignes*, 21–27. For the original Kundschaft Villars 1446 (early 16th c.), see ACV C IV Nr. 460; for copies, see AVL H4, AVL C Va Nr. 122. For the original Kundschaft Kölliken 1455 in the Lenzburg castle agricultural land list (1539), see StAAG Urkunden Lenzburg 99; for a copy, see RQAG 2.1:515–18. Several copied transcripts appear in Stadtbuch Bern (15th c.): StAB A I 453a. fol. 135r (copy of Kundschaft Brugg 1452), 201v–202v (copy of Kundschaft Friedau 1462), 203r–205r (copy of Kundschaft Herrschaft Riedburg 1463), 229r–230v (copy of Kundschaft Bleichenbach 1456), 262r–265v (copy of Öffnung Seftigen 1459). A description and an excerpted edition (which does not reproduce any of the witness depositions) of the city book is provided in RQBE 1.1+2; for the listed documents in the same order, see pp. 507 Nr. 101f., 546 Nr. 153, 547 Nr. 154, 553 Nr. 178, 564 Nr. 199.

55. Dossier from unpaginated single pages, Lausanne (16th c.) ACV IB 55 Nr. 33.

56. Fragmente Kundschaft St. Saphorin (14th c.) ACV IB 55 Nr. 33. The fragment of the originals is contained in the same dossier. Its origin in the second half of the fourteenth century is indicated primarily by—in addition to the script and the formal arrangement of the transcript—the fact that one witness dates his recollections to years after the *magna mortalitate*, the Black Death, while another speaks of events during the tenure of “Bishop Rossillon” (Jean de Rossillon, bishop of Lausanne, 1323–41).

57. Kundschaft Kölliken (“1419”) StAAG Urkunden Lenzburg 65, edited in digest form in RQAG 2.1:509–15: “Dis ist die Kuntschaft von Köllikon miner herren von Bern wider Valckenstein, verhört und ingenomen uff sonnentag als man in der heiligen kilchen singet letare, ist zu mitter vasten, anno domini millesimo quadingentesimo decimo nono in abgeschrift wise gesetzt.”

58. As a result of a prosopographical study, the witnesses can to a large extent also be verified in other regional documents from the early fifteenth century: Richner, *Kölliken-Kundschafter*, 7–33.

59. Conspicuously, each of the leaves 7 to 9 in the copy corresponds to a single document, which are in this order in the original: Kundschaft Kölliken (1455) StAAG Urkunden Lenzburg 99, RQAG 2.1:515–18; Kundschaft Kölliken (1460) StAAG Urkunden Lenzburg 110; Kundschaft Kölliken (1460) StAAG Urkunden Lenzburg 109. The editor of RQAG 2.1:519 noted that passages from the supposed copy of the roll of 1419 recurred in this new witness deposition. He seems to have accepted that the transcripts of 1455 and 1460 contained partial copies of that of 1419. In fact, the reverse is the case. The transcript that supposedly dates from 1419 first originated after 1460 and those of 1455 and 1460 served as models for its last pages. This is the only way to explain the oddities of the copy supposedly from 1419: a witness who appeared in the first part of the roll itself (Welti Weibel, fol. 6) was mentioned by another toward the end as already being dead (fol. 7). Thus several witnesses were mentioned more than once in the course of the roll (see, e.g., Werna Suter, fols. 5, 7, 9; Rutschmann Teitingner, fols. 5, 8, 9), and one told the same anecdote twice, with some variations (see fols. 4 and 7).

60. See Chs. 3 and 4.

61. A copybook, the so-called Bergerbuch (16th c.) StAZ FIIa 185.

62. Brief Berger (1513) StAZ A 124/1 Nr. 64.
63. An example of this is found, for example, in Aktennotiz Zürich (after 1490) StAZ A 131/1 Nr. 67.
64. Kundschaft Grüningen (ca. 1430) StAZ A 124/1 Nr. 19.
65. Hallwiler Seerecht (1419) RQAG 2.1:163 Nr. 11.
66. Kundschaft Hallwil (1481) StAB UP 8 Nr. 40 fol. 1v (Heinsli Zeiger and Ruode Wilhelm), 2r (Peter Römer), as well as those named in the following note. On legal relationships on the lake and this conflict, see the observations of Siegrist, “Beiträge,” 68–76, 134–36, 147–51, 233–39, 435.
67. Kundschaft Hallwil (1481) StAB UP 8 Nr. 40 fol. 1v (Hennsli Friedrich), see also 1v (Ruode Wilhelm), 2r (Peter Römer), 2v (Clewi Hässi), 5r (Peter Kiener).
68. Especially significant statements of this sort are made in, among others, Kundschaft Hallwil (1481) StAB UP 8 Nr. 40 fol. 3r (Peter Walder), 3v (Ulliman Her and Hensli Rey), 4r (Peter Sigrist and Peter Hartmann), 4v (Heini von Lütwyli).
69. Urteilsurkunde Hallwil (1481) RQAG 2.1:204f. Nr. 28, see RQAG 2.8:107f. Nr. 24.
70. On the “biographies” of objects, see the articles in Appadurai, *Life*.
71. See Ch. 4, and Teuscher, “Notiz”; the explanation given here broadly follows this article.
72. Vidimus Plaict Lausanne (1394) ACV C IV Nr. 364: “cum locis et diversis personibus posset esse necessarius exhibere quodcum exhiberi non posset nisi uno loco ... cum etiam sit periculosum dictum originale instrumentum de locu ad locum transferre varias periculas sigillorum fractuendi ... manus temeraria vel eciam violenta ipsa quod sumpta exemplaria seu transcripta faceremus.”
73. Urkunde Lausanne (1420) SDVD Vol. B1:498f. Nr. 284. See note 27, ff in this chapter.
74. Klageschrift Lausanne (1481) SDVD Vol. B1:381 Nr. 214. See the mentions of the relationship between bishop and city in the arbitration court records: SDVD Vol. B1:209, Nrn. 374f. (1465), 379 Nr. 213 (1480).
75. Urkunde Lausanne (1406) SDVD Vol. B1:353 Nr. 155, see further SDVD Vol. B1:356 Nr. 197 (1473); Kaiserprivileg Lausanne (1434) SDVD Vol. B1:25 Nr. 35. See the diverse acts and orders regarding oaths (15th c.) SDVD Vol. B1:462 Nr. 259 (1430, appellate judge), 255 Nr. 252 (1464, steward), 712 Nr. 489 (1482, appellate judge), 122 Nr. 109 (1482, Savoyard appellate judge), 458 Nr. 256 (1483, bailiff and his representatives).
76. Mandat Lausanne (1482) SDVD Vol. B1:702 Nr. 489.
77. Mandat Lausanne (1485) MDR 35:271 Nr. 1. In fact, however, there are stipulations relevant to this question in another order from 1398 preserved in the city archive: SDVD Vol. B1:568 Nr. 338 (1398).
78. Assmann, *Gedächtnis*, 103–25.
79. Illich, *Vineyard*, 115–23; Kuchenbuch, “Quellen,” 332–52; Kuchenbuch and Kleine, *Textus*.
80. Commentaire Lausanne (15th c.) SDVD Vol. B1:239–349 Nr. 192. On contemporary glossing practices, see Powitz, *Textus*, esp. p. 85; Bellomo, *Past*, 126–48; Bellomo, “Text”; see the following notes.
81. Reconnaissances Romainmôtier (1497–99) SDVD Vol. B2:404 Nr. 365; Poudret, “Condition,” 443f.
82. See Ch. 4.
83. Reconnaissances Romainmôtier (1497–99) SDVD Vol. B2:404f. Nr. 365 “ex quibus certa capitula in eodem placito generali sumpserunt originem et certa capitula fuerunt hactenus usitata et adhuc nunc utitur eisdem.”
84. Individual phrases that the treatise introduced were included in hardly altered form in the new legal records; see, e.g., Reconnaissances Romainmôtier (1497–99) SDVD 2 B:408 Nr. 365 § 19 “Ex qua manumortua competit domino excheta omnium bonorum mobilium et immobilium omnium decedentium in terra Romanimonasterii ab hoc seculo sine heredibus naturalibus et legitimis, sive legitimis et inidivisis.” See Commentaire Romainmôtier (1490s)

BCU F 991, p. 63: “et quia ratione manus morte, sub eius conitione bona tenentur existentia in eadem terra Romanimonasterii ab eadem ecclesia procedunt exchete bonorum decedentium sine heredibus naturalibus vel legitimis indivisis.”

85. On the official careers of the three, see Poudret, “Condition,” 444; Teuscher, “Notiz,” 274f. See Castelnuevo, *Ufficali*; Castelnuevo, “Offices.”

86. See Ch. 4.

87. Commentaire Romainmôtier (1490s) BCU F 991, pp. 60–62.

88. Poudret, “Condition,” 444; Poudret, *Coutumes*, 1:236; Masméjean, “Droit.”

89. Commentaire Lausanne (15th c.) SDVD Vol. B1:317 (CXXI ad 140–43), 321 (CXXI ad 140–43), 322 (CXXII ad 145), 325 (CXXII ad 145) Nr. 192; Commentaire Romainmôtier (1490s) BCU F 991, p. 66.

90. Commentaire Lausanne (15th c.) SDVD Vol. B1:245 (VI–VII ad 6–8), 271 (XLVI ad 44), 277 (LVII ad 55 and 56) Nr. 192.

91. Commentaire Lausanne (15th c.) SDVD Vol. B1:242 (II ad 2), 252f. (XVII ad 76), 281 (LXV ad 67), 284 (LXIX ad 71), 289 (LXXIV ad 130 and 131), 300 (XCVI ad 106), 303 (CI ad 111), 332 (CXXIII ad 146) Nr. 192. This course of action is also mentioned by the commentator of the *Plaict* of Romainmôtier as a legitimate possibility for supplementing the set of regulations contained in the text, but he gives no examples of its implementation. Commentaire Romainmôtier (1490s) BCU F 991, p. 63.

92. Commentaire Lausanne (15th c.) SDVD Vol. B1:272 (L ad 49), 311 (CXX ad 139) Nr. 192. See Commentaire Romainmôtier (1490s) BCU F 991, p. 67.

93. Commentaire Lausanne (15th c.) SDVD Vol. B1:125 (XXXIV ad 32) Nr. 192.

94. Commentaire Romainmôtier (1490s) BCU F 991, p. 73.

95. Commentaire Lausanne (15th c.) SDVD Vol. B1:248 (IX ad 21), 256–58 (XX ad 79), 298 (XCII ad 100, 101, 102) Nr. 192.

96. Commentaire Romainmôtier (1490s) BCU F 991, pp. 70–73 throughout. See Commentaire Lausanne (15th c.) SDVD Vol. B1:266, 294, 285, 299, 300 Nr. 192.

97. Commentaire Lausanne (15th c.) SDVD Vol. B1:300 (XCVI ad 106), 303 (CI ad 111), 281 (LXV ad 67) Nr. 192: “sed multociens fit discordis, quia quot sunt capita tot sunt sensus et opiniones”; Commentaire Romainmôtier (1490s) BCU F 991, p. 68f.

98. Knobloch, “Status”; Kuchenbuch, “Quellen,” 332–36.

99. See Ch. 4.

100. For the reinterpretation associated with commentary, see Teuscher, “Notiz.”

101. Commentaire Lausanne (15th c.) SDVD Vol. B1:246, 248, 260, 262–63, 265–67, 268, 270, 275–76, 278, 280, 284 etc. Nr. 192.

102. The concept was noted by Ciardo and Morerod, *Chartes*.

103. For example, the quick dissemination of copies of the *Chartes des Franchises* of Payerne from 1348, which was divided at the beginning of the sixteenth century into numbered sections: Gemeindearchiv von Payerne AC Payerne 1/8, Lausanner Archiv ACV C II 79 and savoyischen Hofarchiv AST Corte 12 pq. 34 (Payerne) Nr. 9, all mentioned in SDVD Vol. B2:222 Nr. 194.

104. See, e.g., translations of the courtly law of Ferach (1480s) StAZ C II Nr. 8b and A 97.3 Nr. 8. On the details of the translation, see Vogel, “Leben”; Urkunde Neuchâtel (1455) SDNE, 92–97 Nr. 35, as a new edition of the *Charte de Franchise* for Neuchâtel (1214) SDNE, 823–92 Nrs. 1 and 1A; see Schnegg, “Propos.”

105. For regional examples, see Poudret, *Coutumes*, 1:152–55; von Salis, “Costumier”; de Vevey, *Rédaction*; Schnegg, “Propos,” 18.

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Protocolli ducali 71, 171
80.2 Vescovadi stranieri, Lausanne

AVL: Archives de la Ville de Lausanne
C V/Va
H4
Monthéron

AVV: Archives de la Ville de Vevey
bleu H bis

StAAG: Staatsarchiv des Kantons Aargau
Urkunden
 Lenzburg
 Trostburg
 Wettingen

StAB: Staatsarchiv des Kantons Bern

A Bücher
 I 453a (Stadtbuch)
HA Herrschaftsarchive
 Holdings before 1500
UP Unnütze Papiere
 Holdings before 1500
Urkunden
 F Interlaken
 F Stift
 F Thun
Varia
 Holdings before 1500

StA Einsiedeln: Stiftsarchiv Einsiedeln
E N

StA Engelberg: Stiftsarchiv Engelberg
D1

StAZ: Staatsarchiv des Kantons Zürich

A Akten
C Urkunden
 I Stadt und Land
 II Klosterämter
F Finanzarchiv
G Archiv Chorherrenstift Grossmünster
RM Ratsmanuale

ZBZ: Zentralbibliothek Zürich, Handschriftenabteilung
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